

**DISPOSITION AND DEVELOPMENT/AFFORDABLE
HOUSING AGREEMENT**

by and between

LOMA LINDA REDEVELOPMENT AGENCY

and

10777 POPLAR ST., L.P., a California limited partnership

DRAFT
FOR STUDY PURPOSES ONLY

DISPOSITION AND DEVELOPMENT/AFFORDABLE HOUSING AGREEMENT

THIS DISPOSITION AND DEVELOPMENT/ AFFORDABLE HOUSING AGREEMENT (the “Agreement”), dated, for identification purposes only, as of March 1, 2006, is entered into by and between the **LOMA LINDA REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”), and **10777 POPLAR ST., L.P.**, a California limited partnership (the “Developer”).

R E C I T A L S

A. Agency is a California redevelopment agency acting under the California Community Redevelopment Law, Part 1 of Division 24 of the Health and Safety Code (the “Redevelopment Law”).

B. The Redevelopment Plan for the Loma Linda Redevelopment Project, sometimes referred to as the Project (herein, the “Project”) was adopted by Ordinance No. 226 by the City Council of the City of Loma Linda and has been subsequently amended (as amended, the “Redevelopment Plan”). The redevelopment project area for the Redevelopment Plan as so amended constitutes the “Project Area”.

C. The Agency is authorized and empowered under the Community Redevelopment Law, California Health and Safety Code Sections 33000, *et seq.* (the “Community Redevelopment Law”), to enter into agreements for the production, improvement, or preservation of affordable housing to households of limited income, with such housing to be available at Affordable Rent (as defined below).

D. The Developer is experienced in the development and operation of affordable multi-family housing, particularly in San Bernardino County.

E. The Developer has proposed to enter into this Agreement with the Agency under which the Developer shall develop forty-four (44) dwelling units and a designated number of those dwelling units to be rented at “Affordable Rent” and at the “Prescribed Rent Levels” throughout the “Required Covenant Period” (as defined below). Those undertakings of the Developer are material to this Agreement and but for those undertakings by the Developer, the Agency would not have entered into this Agreement.

F. It is contemplated under this Agreement that Developer will obtain authorization by the California Debt Limit Allocation Committee (“CDLAC”) for the issuance by the City of Loma Linda (the “City”) or the Agency of multifamily housing bonds for financing of the development contemplated by this Agreement (the “Development”). Any issuance of bonds by the Agency or City shall be accomplished in conformity with the City’s customary practices and procedures for conduit financings and in strict conformity with this Agreement.

G. This Agreement is in the vital and best interest of the City of Loma Linda, California, and the health, safety and welfare of its residents.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. As used in this Agreement (and in all other Project Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“Affiliated Person” means an entity formed for the purpose of constructing, owning, and operating the Development, which includes 10777 Poplar St., L.P., a California limited partnership, as a general partner and which may include tax credit investors as limited partners.

“Affordable Rent” means a cost not in excess of the lesser of (i) that rent which may be charged the applicable Eligible Person or Family pursuant to section 50053 of the California Health and Safety Code and (ii) the limits as set forth in this Agreement.

“Agency” means the Loma Linda Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized under the Redevelopment law, and any assignee of or successor to its rights, powers and responsibilities.

“Agency Deed of Trust” means Attachment No. 14 to this Agreement.

“Agency Developer CC&Rs” or **“Agency Regulatory Agreement”** means Attachment No. 11 to this Agreement.

“Agency Disbursement Amount” means an amount equal to _____ Dollars (\$ _____), which represents the amount of fees chargeable by the City in connection with the Project (other than fees chargeable in connection with the issuance of Bonds).

“Agency Escrow” is described in Section 2.2.

“Agency Lease” means a lease in the form of Attachment No. 6 to this Agreement.

“Agency Note” means Attachment No. 13 to this Agreement.

“Agency/Private Funds Ratio” means the ratio between the Agency Disbursement Amount and the total funds available for the construction of the Improvements by virtue of investors’ equity contributions and the construction loan commitment.

“Applicable Interest Rate” means the interest rate set forth in Section 26.6 of the Agency Lease, or such other interest rate as may hereafter be determined by mutual agreement of the parties.

“Application Deadline” means October 5, 2006 or, if a later date on or before December 31, 2006 is designated by CDLAC as the last date applications for allocations will be received during 2006, then such later date as designated for such purpose by CDLAC, but in no event later than December 31, 2006.

“Application for Disbursement” is defined in Section 4.16 hereof.

“Approved Construction and/or Permanent Lender” means one or more of Bank of America, California Community Reinvestment Corporation (“CCRC”) or Washington Mutual Bank (“WAMU”), Fannie Mae or another mutually acceptable institutional lender.

DRAFT
FOR STUDY PUROSES ONLY

“**Area**” means the San Bernardino Primary Metropolitan Statistical Area, as periodically defined by HUD.

“**Audited Financial Statement**” means an audited financial statement, including without limitation a profit and loss statement, generated by a third party certified public accountant acceptable to the Agency in its reasonable discretion, showing, for the previous Lease Year, on a monthly basis and in an easily readable format, Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve and Residual Receipts.

“**Basic Concept Drawings**” is defined in Section 4.2.1 hereof.

“**Bond Counsel**” means Stradling Yocca Carlson & Rauth, a Professional Corporation, as the Agency’s bond counsel.

“**Bond Deadline**” means December 14, 2006.

“**Bond Regulatory Agreement**” shall mean the regulatory agreement, as prepared by Bond Counsel, which it is contemplated may be required to be recorded against the Site with respect to the issuance of multifamily housing bonds in the event an allocation is obtained from CDLAC, as set forth in Section 5.2.6 hereof.

“**Bond Rules**” means Section 103(b) of the Internal Revenue Code, the rules and regulations applied by CDLAC in connection with the private activity bond allocation or the issuance of bonds thereunder and as set forth in the Indenture of Trust in connection with the issuance of the Bonds.

“**Bonds**” means multifamily housing bonds for the Development, for which Agency may act as issuer. The Bonds shall be obligations secured only by rents from the Development and such credit support as may be provided by Developer at its cost. The City shall have no liability under the Bonds, and excepting only as to rents generated from operation of the Development, the Agency shall have no liability under the Bonds.

“**Building Permit**” means the building permit(s) issued by the City and required for the Improvements.

“**Calculation of Affordable Rents**” means Attachment No. 7 to this Agreement.

“**Capital Replacement Reserve**” means a reserve fund to be established by the Lessee under the Agency Lease as a capital reserve in the amount established therefor by the Lease. To the extent Developer is required to maintain a Capital Replacement Reserve by any Approved Construction and/or Permanent Lender, Developer shall receive a credit hereunder for such amounts maintained by it in compliance with such Approved Construction and/or Permanent Lender capital replacement reserve requirement.

“**Certificate of Completion**” means Attachment No. 10 to this Agreement.

“**Certificate of Continuing Program Compliance**” means the Certificate to be filed by the Developer or its property manager on behalf of the Developer with the Agency, which Certificate shall be substantially in the form attached hereto as Attachment No. 4.

DRAFT
FOR STUDY PUROSES ONLY

“Chargeable Fees and Reserves” means each of the following, within the respective parameters therefor set forth in the Agency Lease: (i) Capital Replacement Reserve; and (ii) Operating Reserve.

“CDLAC” is defined in Recital F hereof.

“City” means the City of Loma Linda, California, a California municipal corporation.

“Condition of Title” is defined in Section 2.3 hereof.

“Agency Conditions Precedent” is set forth in Section 3.1.

“County” means the County of San Bernardino, California.

“Date of Agreement” means March 1, 2006.

“Debt Service” means required debt service payments for the Primary Construction Loan and/or the Primary Permanent Loan including the funding obligations in respect of all reserves or escrows required thereunder.

“Default” is defined in Section 7.1 hereof.

“Developer” means 10777 Poplar St., L.P., a California limited partnership.

“Developer’s Policy” is defined in Section 2.4.

“Development” means the new apartment complex and associated improvements as required by this Agreement to be: (i) constructed by the Developer upon the Site, with related offsite improvements, as more particularly described in the Scope of Development, and (ii) operated in conformity with the Agency Lease, the Agency Developer CC&Rs and the Bond Regulatory Agreement.

“Escrow Holder” means the holder of the Escrow for the Lease by the Agency to the Developer and the recordation of the Agency Developer CC&Rs, which shall be Alliance Title Company or another escrow holder mutually acceptable to the Agency and the Developer.

“Event of Default” has the meaning set forth in Section 7.1.

“Executive Director” means the Executive Director of the Agency or his designee or delegate.

“Gross Revenues” means the total rental income and all other revenues or income received by the Lessee or its successors or assigns in connection with the Project, including without limitation Housing Rent, laundry charges, cable income, and interest earnings, but, except for any interest earned thereon, does not include (i) the proceeds of the sale of Tax Credits to finance the Development, (ii) refinancing proceeds (provided the refinancing is permitted by and is accomplished in accordance with the Agency Lease and this Agreement) or (iii) insurance proceeds applied to reconstruct or repair the Improvements.

DRAFT
FOR STUDY PUROSES ONLY

“Housing Rent” shall mean the total of monthly payments by the tenants of a Unit for (a) use and occupancy for the Unit and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants of the Units, other than security deposits, (c) a reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity and gas, as determined by regulation of Housing Authority of the County of San Bernardino pursuant to 24 C.F.R. Part 813 and (d) possessory interest, taxes or other fees or charges assessed for the use of the Units and facilities associated therewith by a public or private entity other than the Developer.

“Improvements” means all of the improvements described in the Scope of Development.

“Income Verification” means Attachment No. 12 to this Agreement.

“Lease Year” means the period commencing as of the Commencement Date of the Agency Lease and ending as of December 31 of that calendar year, then each succeeding calendar year thereafter during the Term of the Agency Lease.

“Lease” means the lease of the Site by the Agency to the Developer.

“Legal Description of the Site” means Attachment No. 2 to this Agreement.

“Low Income Households” or **“Lower Income Households”** means households earning not greater than eighty percent (80%) of Median Income pursuant to Health and Safety Code Section 50079.5.

“Median Income” means Median Income for the Area (namely, San Bernardino County), as set forth by regulation of the California Department of Housing and Community Development pursuant to Health and Safety Code Sections 50079.5 and 50105.

“Net Operating Income” means Gross Revenues, less Operating Expenses, and further less Debt Service.

“Notice” shall mean a notice in the form prescribed by Section 8.2 hereof.

“Operating Expenses” means actual, reasonable and customary costs, fees and expenses directly incurred and for which payment has been made and which are attributable to the operation, maintenance, and management of the Project, excluding the Capital Replacement Reserve and consisting of only the following (and such additional items, if any, as to which the prior written approval of the Executive Director is first obtained. Such approval shall be granted, granted subject to conditions, or refused at the sole and absolute discretion of the Executive Director): painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; sewer charges; costs incurred to third parties in connection with generating laundry charges (but in no event to exceed the laundry charges); real and personal property taxes and assessments; insurance premiums; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; actual and customary salary payable to an on-site manager which directly and exclusively benefits residents of the Project; the actual and customary salary paid for one assistant manager, one on-site maintenance manager and such other on-site management personnel, if any, which directly and exclusively benefit residents of the Project, subject to the prior written approval of the Executive Director at his sole and absolute discretion; a management fee (“Management Fee”) (excluding any on-site management

DRAFT
FOR STUDY PUROSES ONLY

personnel) of not to exceed five and one-half percent (5 ½%) of Gross Revenues; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable and customary fees and expenses of accountants, attorneys, consultants and other professionals as incurred commencing after the completion of the Improvements (as evidenced by the issuance by City of a certificate of occupancy for the corresponding building developed as part of the Improvements) in connection with the operation of the Project; tenant improvements that are not included in the costs of the Improvements, and payments made by the Developer to satisfy indemnity obligations and other payments by the Developer pursuant to this Agreement other than to the Developer, partners or other related persons; provided, however, that payments to parties related to Developer for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the Audited Financial Statement and shall be broken out in line item detail.

“Operating Reserve” means a reserve fund to be established by the Lessee under the Agency Lease as a reserve for operating expenses in the amount of ten thousand dollars (\$10,000.00) per Lease Year (for the first Lease Year), increasing at the rate of three and one-half percent (3 ½%) annually. The Operating Reserve is more fully described in Section 10 of the Agency Lease. Interest earned on moneys held in the Operating Reserve shall be retained in the Operating Reserve. To the extent Developer is required to maintain an Operating Reserve by any Approved Construction and/or Permanent Lender, Developer shall receive a credit hereunder for such amounts maintained by it in compliance such Approved Construction and/or Permanent Lender operating reserve requirement.

“Permitted Senior Lien” means collectively, the deeds of trust securing the Primary Construction Loan and the Primary Permanent Loan.

“Prescribed Rent Levels” means rent that is Affordable Rent for households at the following income levels: (i) for one (1) one-bedroom unit, three (3) two-bedroom units, and two (2) three-bedroom units, thirty five percent (35%) of Median Income; (ii) for two (2) one-bedroom units, five (5) two-bedroom units, four (4) three-bedroom units and two (2) four-bedroom units, forty percent (40%) of Median Income; and (iii) for two (2) four-bedroom units, sixty percent (60%) of Median Income.

“Primary Construction Loan” means the mortgage loans and letters of credit obtained by the Developer from a state agency or instrumentality or a reputable and established bank, savings and loan association, or other similar financial institution for financing the development (but not the operation) of the Project pursuant to this Agreement.

“Primary Permanent Loan” means the mortgage loan obtained by the Developer from a state agency or instrumentality or a reputable and established bank, savings and loan association, or other similar financial institution in an amount limited to satisfaction of the outstanding balance of the Primary Construction Loan or in an amount in excess of such outstanding balance.

“Principals” means Charles Brumbaugh.

“Project Documents” means, collectively, this Agreement, the Agency Developer CC&Rs, the Agency Lease, all other Attachments to this Agreement, and any other agreement, document, or instrument that Agency requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

DRAFT
FOR STUDY PUROSES ONLY

“Recordable Documents” means the following: (i) the Bond Regulatory Agreement; (ii) the Agency Developer CC&Rs; and (iii) such other instruments as shall be approved by Executive Director (upon consultation with Agency’s legal counsel) as necessary or convenient to effectuate and implement the initial financing of the Improvements (and the permanent financing thereof).

“Redevelopment Plan” is defined in Section 1.5 hereof.

“Related Entity” means a Principal or an entity in which any interest is held by the Developer or one or more of the Principals.

“Request for Notice of Default” means Attachment No. 8.

“Required Affordable Units” means twenty one (21) of the dwelling units required to be developed on the Site under this Agreement.

“Required Covenant Period” means a period of sixty (60) years, as more particularly set forth in the Agency Developer CC&R’s.

“Residual Receipts” for a particular Lease Year means Gross Revenues for the corresponding Lease Year less (i) Debt Service payments made during such Lease Year on the Primary Construction Loan or the Primary Permanent Loan in amounts not in excess of the amounts due and payable during such Lease Year (and not including prepayments), and (ii) the sum of Operating Expenses and, to the extent funded, Chargeable Fees and Reserves made during the corresponding Lease Year. All calculations of Residual Receipts shall be made annually, on or before March 15 for the preceding Lease Year, on a cash (and not accrual) basis and the components thereof shall be subject to verification and approval, on an annual basis, based upon conformity with the terms of this Agreement and the Agency Lease, by the Agency.

“Residual Receipts Payment” means the Developer’s payment to the Agency of an amount equal to the Applicable Percentage of Residual Receipts as required in Section 2.5.

“Schedule of Performance” means Attachment No. 3 to this Agreement. The Schedule of Performance sets forth the dates by which Agency and Developer are to perform certain obligations under this Agreement.

“Scope of Development” means Attachment No. 9 to this Agreement.

“Site” means that real property depicted on the Site Map and described with greater particularity by the Legal Description of the Site.

“Site Map” means Attachment No. 1 to this Agreement.

“Site Value” means Three Million Dollars (\$3,000,000.00) or such greater amount as may hereafter be mutually designated in writing by the Developer and the Agency as the value of the Site as of the Date of Agreement.

“Subordination and Intercreditor Agreement” means an agreement as may hereafter be approved by the Developer and the Executive Director (on behalf of the Agency) in connection with the Primary Construction Loan and the Primary Permanent Loan as may be mutually approved by the Agency’s bond counsel and the relevant secured lenders.

DRAFT
FOR STUDY PUROSES ONLY

“Tax Credit Rules” means Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*, and the rules and regulations implementing the foregoing.

“Tax Credits” shall mean 4% Low Income Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, *et seq.*

“Term of the Agency Lease” means sixty (60) years, as more particularly set forth in the Agency Lease.

“Title Company” shall be Alliance Title Company or another title insurer mutually acceptable to the Agency and the Developer.

“Unit” means each of the forty-four (44) dwelling units required to be developed by the Developer under this Agreement.

“Very Low Income Households” means households earning not greater than fifty percent (50%) of Median Income for the Area pursuant to Health and Safety Code Section 50105.

1.2 Singular and Plural Terms. Any defined term used in the plural in this Agreement or any Project Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 References and Other Terms. Any reference to this Agreement or any Project Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

1.4 Exhibits Incorporated. All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

1.5 The Redevelopment Plan. The Redevelopment Plan for the Loma Linda Redevelopment Project (the “Redevelopment Project”) was first approved by Ordinance No. 226 adopted by the City Council of the City on July 15, 1980, and has been amended by Ordinance No. 508 of the City adopted on December 13, 1994 and Ordinance No. 374 as adopted on May 12, 1987. The various component areas of the Project Area have been merged and constitute one redevelopment project area. The project area of the Redevelopment Project is referred to herein as the “Project Area”. The use of the Site for affordable housing purposes under this Agreement is of benefit to the Project Area. This Agreement is made pursuant to the Redevelopment Plan. The Developer has reviewed the Redevelopment Plan and agrees to perform under this Agreement in conformity with the Redevelopment Plan and this Agreement.

1.6 Representations and Warranties.

1.6.1 Agency Representations. Agency represents and warrants to Developer as follows:

(a) **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City. Agency has full right, power and lawful authority to lease the Site as provided herein and the execution, performance, and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency. The parties who have executed this Agreement on behalf of Agency are authorized to bind Agency by their signatures hereto.

(b) **Litigation.** To the best of Agency's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(c) **No Conflict.** To the best of Agency's knowledge, Agency's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(d) **No Agency Bankruptcy.** Agency is not the subject of a bankruptcy proceeding.

Until the Lease, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.6.1 not to be true as of the Lease, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by Agency hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Developer elects to accept the Lease and possession of the Site following disclosure of such information, Agency's representations and warranties contained herein shall be deemed to have been made as of the Lease, subject to such exception(s). If, following the disclosure of such information, Developer elects to not accept the Lease of and possession of the Site, then this Agreement shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 1.6.1 shall survive the Lease.

1.6.2 Developer Representations. Developer represents and warrants to Agency as follows:

(a) **Authority.** Developer is a duly organized limited partnership organized within and in good standing under the laws of the State of California. Developer has full right, power and lawful authority to lease and accept title to and possession of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

DRAFT
FOR STUDY PUROSES ONLY

(b) **Litigation.** To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Developer, at law or in equity before any court or governmental agency, domestic or foreign.

(c) **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(d) **No Developer Bankruptcy.** Developer is not the subject of a bankruptcy proceeding.

(e) **Developer Experience; Sophisticated Party.** The Principals of Developer are sophisticated parties, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, marketing, and operation of affordable housing projects and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Developer is familiar with and has reviewed all laws and regulations pertaining to the development and operation of the Development, including without the Bond Rules and the Tax Credit Rules, and has obtained advice from any advisers of its own choosing in connection with this Agreement.

(f) **Due Authorization and Execution; Studies Completed.** Developer has duly authorized the execution of this Agreement, the Agency Developer CC&Rs, the Agency Note, the Agency Deed of Trust and the Agency Lease. Developer is ready, willing and able to execute the Agency Developer CC&Rs, the Agency Note, the Agency Deed of Trust, and all documents necessary to effectuate the Lease and has conducted all studies necessary to proceed with the Development. Concurrently with the execution of this Agreement by Agency or within three (3) calendar days thereafter, Developer shall execute and deposit with the Agency (to be held pending satisfaction of the Agency Conditions Precedent as set forth in Section 3.1 hereunder) the Agency Developer CC&Rs, the Agency Note, the Agency Deed of Trust, and all documents necessary to effectuate the Lease hereunder.

Until the Lease, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.6.2 not to be true as of the Lease, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove if such exception would have an effect on the development and/or operation of the Site. If Agency elects to proceed with the Lease following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Lease, subject to such exception(s). If, following the disclosure of such information, Agency elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 1.6.2 shall survive the Lease.

2. DISPOSITION OF THE SITE

2.1 Lease of the Site. Subject to the satisfaction of those conditions set forth in Sections 3.1 and 3.2 hereof, the Agency is prepared to enter into the Lease with the Developer.

DRAFT
FOR STUDY PURPOSES ONLY

The Developer warrants and represents that it has undertaken and completed at its expense an investigation of the Site, including without limitation condition of title, the presence of any hazardous materials and other surface and subsurface conditions, and the suitability of the Site for the Improvements required pursuant to this Agreement. The Developer has selected the Site and has determined that it is suitable for all development and uses as provided for pursuant to this Agreement. Prior to the Date of Agreement, the Agency has provided to the Developer a preliminary title report by the Title Company. Developer has reviewed the condition of leasehold title to the Site and the condition of the Site (as more fully set forth in Section 2.3 of this Agreement), and all such matters are satisfactory to the Developer.

In consideration of the Agency entering into the Agency Lease, the Developer shall pay rent under the Agency Lease, and shall comply with and cause the use of the Site to conform to the Agency Lease and the Agency Developer CC&Rs throughout the Required Covenant Period.

2.1.1 Agency Disbursement Amount. Subject to the prior satisfaction of the Conditions Precedent, the Agency agrees to disburse the Agency Disbursement Amount. Disbursement of the Agency Disbursement Amount shall be accomplished at the time(s) and in the manner prescribed by Section 4.16 of this Agreement. The Agency Disbursement Amount is being disbursed as a loan, and shall be repaid from Residual Receipts as set forth in the Agency Note. The Agency Note shall be secured by the Agency Deed of Trust. The obligation of Developer (as Lessee under the Agency Lease) to repay the Agency Disbursement Amount from Residual Receipts is also set forth in the Agency Lease as part thereof. The Agency Deed of Trust is to be recorded against Developer's fee interest under the Agency Lease (which deeds of trust shall be subordinate to liens securing repayment of the Primary Construction Loan and the Primary Permanent Loan).

The Agency Disbursement Amount shall be disbursed as follows: (a) that amount attributable to City fees shall be disbursed by the Agency to the City at the time the City customarily collects City fees; and (b) other amounts, if any, shall be disbursed after pouring of foundations for the Improvements. Interest shall accrue only on the amounts so disbursed. At its election, the Agency may, at any time, prepay in whole or in part, the outstanding amount payable by Agency under this Section 2.1.1.

2.2 Escrow. The parties shall open an escrow (the "Agency Escrow") with the Escrow Holder, by the time established therefor in the Schedule of Performance for the Lease, and the recordation and delivery of documents described in Section 2.1. The Agency and the Developer agree to execute such escrow instructions as may be reasonably required to implement this Section 2.2. The obligation of the Agency to deliver the Agency Lease, as well as the Agency Note, the Agency Deed of Trust and, if not previously recorded, the Agency Developer CC&Rs, to escrow or to proceed with the Lease is contingent upon the satisfaction of the "Conditions," as set forth in Section 3.1 of this Agreement.

2.2.1 Costs of Escrow. The Agency and the Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 2.4 hereof, the Agency shall pay for the documentary transfer taxes, if any, due with respect to the Lease, and the Developer and Agency each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow.

2.2.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and the Agency, and the Escrow Holder to whom these instructions are

DRAFT
FOR STUDY PUROSES ONLY

delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and the Agency will cancel its own policies after the Lease. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

If in the opinion of either party it is necessary or convenient in order to accomplish the Lease, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Lease shall take place when the Conditions Precedent have been satisfied. Escrow Holder is instructed to release Agency's escrow closing and The Developer's escrow closing statements to the respective parties.

2.2.3 Authority of Escrow Holder. Escrow Holder is authorized to, and shall:

(a) Pay and charge the Developer and Agency for their respective shares of the premium of the Developer's Policy as set forth in Section 2.4 and any amount necessary to place title in the condition necessary to satisfy Section 2.3 of this Agreement.

(b) Pay and charge the Developer and Agency for their respective shares of any escrow fees, charges, and costs payable under Section 2.2.1 of this Agreement.

(c) Pay and charge the Developer for any endorsements to the Developer's Policy which are requested by the Developer.

(d) Disburse funds, record and deliver the Recordable Documents in the order set forth above.

(e) Do such other actions as necessary to fulfill its obligations under this Agreement.

(f) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

2.2.4 Closing. The Lease and delivery of documents related shall close ("Closing") within thirty (30) days of the parties' satisfaction of all of Conditions Precedent, but in no event later than the last day established therefor in the Schedule of Performance. The "Closing" shall mean the time and day that each of the Agency Note is executed and held by Escrow Holder for delivery to Agency and all of the Agency Developer CC&Rs and the Agency Deed of Trust have been recorded by the San Bernardino County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

DRAFT
FOR STUDY PUROSES ONLY

2.2.5 Termination. If Escrow is not in condition to close by the time established therefor in the Schedule of Performance, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If either party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Holder shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Holder is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. The Developer, however, shall have the sole option to withdraw any money deposited by it with respect to the Closing less the Developer's share of costs of Escrow. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Holder shall proceed with the Closing as soon as possible. At the election of the Agency, default by the Developer under this Agreement shall constitute a default under this Agreement.

2.2.6 Closing Procedure. Escrow Holder shall close Escrow for the Lease as follows:

Record the following documents in this order: (i) the Bond Regulatory Agreement; (ii) the Agency Developer CC&Rs; and (iii) such other instruments, if any, as shall be approved by Executive Director (upon consultation with Agency's legal counsel) as necessary or convenient to effectuate and implement the initial financing of the Improvements (and the permanent financing thereof), with instructions for the Recorder of San Bernardino County, California to deliver to the Agency the Agency Developer CC&Rs, the Agency Deed of Trust, and a certified copy of each to the Developer. The order of recordation shall be subject to revision upon approval of the Executive Director. The Escrow Holder shall also deliver the Agency Note to Agency;

(a) Instruct the Title Company to deliver the Developer's Policy to the Developer, with a copy to the Agency;

(b) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(c) Deliver the FIRPTA Certificate, if any, to the Developer;

(d) Deliver documents as set forth in Section 2.2.3 hereof; and

(e) Forward to both the Developer and the Agency a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

2.3 Review of Title. The Agency has caused a title company mutually agreeable to both parties (the “Title Company”), to deliver to the Developer a standard preliminary title report (the “Report”) with respect to the Site, and the Agency will endeavor to cause the Title Company to provide to Developer legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Report, within fifteen (15) days from the date of this Agreement. The Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the Developer hereby approves the following Exceptions:

- (a) The Redevelopment Plan.
- (b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).
- (c) The provisions of the Agency Developer CC&Rs, the Agency Lease, the Agency Deed of Trust and the Bond Regulatory Agreement.
- (d) Any incidental easements or other matters affecting title which do not materially impact the Developer’s use of the Site as described in the Scope of Development.

The Developer shall have thirty (30) days from the date of its receipt of the Report to give written notice to Agency and Escrow Holder of the Developer’s approval or disapproval of any of such Exceptions. The Developer’s failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report. If the Developer notifies Agency of its disapproval of any Exceptions in the Report, the Agency shall have ten (10) days from the receipt of written notice of disapproval by the Developer to determine whether or not it will undertake the removal of any disapproved Exceptions. If the Agency elects to remove such Exceptions, it shall diligently proceed to effect the removal of such Exceptions. If Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, the Developer shall have ten (10) business days after the expiration of such ten (10) business day period to either give the Agency written notice that the Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Agency written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the “Condition of Title.” The Developer shall have the right to approve or disapprove any additional and previously unreported Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Site (which are not created by the Developer).

2.4 Title Insurance. Concurrently with recordation of the Lease or a memorandum thereof, there shall be issued to the Developer a CLTA lessee’s policy of title insurance (the “Developer’s Policy”), based upon the amount of the Site Value, together with such endorsements as are reasonably requested by the Developer, issued by the Title Company insuring that the title to the Site is vested in the Developer in the condition required by Section 2.3 of this Agreement. The Title Company shall provide the Agency with a copy of the Developer’s Policy. The Developer’s Policy shall be based upon the Site Value. The Agency shall pay that portion of the premium for the Developer’s Policy equal to the cost of a CLTA standard coverage title policy for a leasehold in the amount based upon the Site Value. Any additional costs, including the cost of an ALTA policy or any endorsements requested by the Developer, shall be borne by the Developer.

2.5 Developer Payments. The Developer shall, on the first day of each Lease Year , continuing as of the Commencement Date and ending as of December 31, 2067, pay to the Agency an amount equal to the Applicable Percentage of Residual Receipts (the “Residual Receipts Payments”). Payments under the Agency Note and the Home Note shall apply toward this obligation; however, the requirements of this Section 2.5 shall control and it is mutually understood and expected that this Section 2.5 will require greater payments over a longer period of time than may be required under the Agency Note and the Home Note. Payments received by the Agency shall be applied first to the Agency Note and, upon satisfaction of the Agency Note, to reduce amounts payable under the Home Note, then to amounts owing or continuing to accrue under this Section 2.5. In addition, in the event of (i) a sale, assignment or transfer of the Development or (ii) the refinancing of the Development in an amount greater than the outstanding balance of a loan existing as of the time such refinancing is commenced, the Developer shall pay to Agency, concurrent with such event (“Capital Event”) an amount equal to the lesser of (a) one-half (1/2) of the net proceeds of such sale, assignment, transfer or refinancing, determined by applying those closing costs of unrelated third parties which do not exceed normal and customary costs charged by such unrelated third parties or (b) seventy-five percent (75%) of the net proceeds remaining after repayment of the Primary Construction Loan and the Primary Permanent Loan. Such payments, which shall be due and payable concurrent with each and every Capital Event which occurs during the Term of the Lease, shall constitute “Capital Events Payments.” Any such Capital Events Payments shall reduce the Agency Note and, if applicable, the Home Note, but not amounts due under the Agency Lease or amounts thereafter accruing under this Section 2.5.

3. CONDITION TO CLOSING AND TO DISBURSEMENT OF THE AGENCY DISBURSEMENT AMOUNT

3.1 Agency Conditions Precedent. The Agency shall not effect the Lease, as provided pursuant to this Agreement, or disburse all or any portion of the Agency Disbursement Amount, as provided pursuant to this Agreement, unless all of the following conditions precedent (the “Agency Conditions Precedent”) has been fully satisfied, as determined in good faith by the Executive Director (which condition, if it requires action by Developer, shall also be a covenant of Developer):

(a) **Issuance of Bonds.** The Developer shall have satisfied all conditions precedent to the issuance of multifamily housing bonds by the City or the Agency and such bonds shall have issued (or shall be required to close concurrent with the commencement of the Lease).

(b) **Recording of Certain Documents.** Each of the Agency Developer CC&Rs, the Agency Lease or a memorandum of lease in form approved by the Executive Director, the Agency Deed of Trust has been recorded.

(c) **Evidence of Financing.** Developer shall have provided written proof acceptable to Agency that the Developer has sufficient internal funds and/or has obtained a loan or financing, subject to customary conditions, which shall include proceeds of multifamily housing bonds issued by the City or the Agency, for construction of the Development, and Agency has approved such evidence of financing, in accordance with Sections 4.15 and 4.15.1.1 hereof. In the event Developer obtains a loan or financing for the construction of the Development, such construction loan or financing for the Development shall be ready to close, and shall close, and a portion of proceeds from the sale of Tax Credits, as described in Section 4.15.1.1, shall be immediately available for use in constructing the Improvements.

DRAFT
FOR STUDY PUROSES ONLY

(d) Construction Contract. Developer shall have provided to the Agency a signed copy of a fixed-price contract between the Developer and the general contractor for the construction of the Development, certified by the Developer to be a true and correct copy thereof, and Executive Director shall have approved such contractor or contractors, and the construction contract or contracts, pursuant to Section 4.15 hereof. The parties acknowledge that the Principals are or may be Related Parties to the Developer. However, nothing contained in this subsection (c) shall be deemed to create any responsibility or liability for selection of the contractor(s) of for construction of the Improvements, the Developer being solely responsible for such activities.

(e) Payment, Performance and Completion Bonds. Developer shall have obtained payment bonds and performance and completion bonds for off-site improvements as may be customarily required by City in connection with its subdivision process, in an amount and from a surety company reasonably acceptable to the Executive Director. All bonds shall be issued by good and solvent sureties qualified to do business in California and shall have a rating of A or better in the most recent edition of Best's Key Rating Guide.

(f) Confirmation by Lender Concerning Disbursements. The Agency shall have received written confirmation from a reasonably acceptable construction lender that such lender agrees to cause the disbursement of funds consistent with Section 4.16 of this Agreement or that such construction lender acknowledges that the disbursement of the Agency Disbursement Amount will be accomplished by Agency in the manner described in Section 4.16 of this Agreement.

(g) CDLAC Approval. All CDLAC approvals required in connection with the issuance of multifamily housing bonds for the Project have been obtained and remain in full force and effect.

(h) Insurance. Agency shall have received evidence, satisfactory to Executive Director, that all of the insurance policies required by Section 4.5, below, are in full force and effect.

(i) Representations and Warranties. The representations and warranties of Developer contained in this Agreement shall be correct as of the request for disbursement of the Agency Disbursement Amount as though made on and as of that date, and Executive Director shall have received a certificate to that effect signed by an officer of Developer.

(j) No Default. No Event of Default by Developer shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer under this Agreement, and Executive Director shall have received a certificate to that effect signed by an officer of Developer.

All conditions set forth in Section 3.1, or to Agency's obligations hereunder, are for Agency's benefit only and Executive Director may waive all or any part of such rights by written notice to Developer and Escrow Holder. If Executive Director shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to Agency's approval, or if any of the conditions set forth in this Agreement are not met within the times called for, Agency may thereafter terminate this Agreement without any further liability on the part of Agency by giving written notice of termination to the Escrow Holder, with a copy to Developer. Escrow Holder shall thereupon, without further consent from Developer, return to each party the documents and funds deposited by them.

4. SCOPE OF DEVELOPMENT; INSURANCE AND INDEMNITY, FINANCING

4.1 Scope of Development. The Developer shall develop the Improvements in accordance with the Scope of Development, and the approved plans, drawings and documents for the Improvements. In the event of any inconsistency between the Scope of Development and the plans for the Improvements which have been approved by the Agency and/or City, the approved Development plans shall control.

4.2 Design Review.

4.2.1 Developer Submissions. Prior to the Date of Agreement, in connection with its application for land use approvals by the City, the Developer has submitted “Basic Concept Drawings” for the Improvements. Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer shall submit to the City any plans and drawings (collectively, the “Design Development Drawings”) which may be required by the City with respect to any permits and entitlements which are required to be obtained to develop the Improvements, which the City shall comment on and return to the Developer within fifteen (15) days from the date of receipt thereof. Developer, on or prior to the date set forth in the Schedule of Performance, shall submit to the City such plans for the Improvements as required by the City in order for Developer to obtain building permits for the Improvements. Within thirty (30) days after the City’s disapproval or conditional approval of such plans, Developer shall revise the portions of such plans identified by the City as requiring revisions and resubmit the revised plans to the City.

4.2.2 City Review and Approval. The City shall have all rights to review and approve or disapprove all Design Development Drawings and other required submittals in accordance with the City Municipal Code, and nothing set forth in this Agreement shall be construed to constitute the City’s approval of any or all of the Design Development Drawings or to limit or affect the City’s review and right to approve, approve subject to conditions, or disapprove Design Development Drawings, plans, drawings, applications, or submittals.

4.2.3 Revisions. Any and all change orders or revisions required by the City and its inspectors under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Design Development Drawings and other required submittals and shall be completed during the construction of the Improvements.

4.2.4 Defects in Plans. The Agency and the City shall not be responsible either to the Developer or to third parties in any way for any defects in the Design Development Drawings, nor for any structural or other defects in any work done according to the approved Design Development Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 4.2.4.

4.2.5 Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by the City or any other governmental agency affected by or having jurisdiction over such construction or work, except for those which are the responsibility of Agency as set forth herein, including without limitation a license agreement between the Developer and the City allowing entry onto the Site which indemnifies City and the

DRAFT
FOR STUDY PURPOSES ONLY

Agency from any claims made in connection with the activities of the Developer. The Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by the City, County of San Bernardino, and other governmental agencies with jurisdiction over the Improvements.

4.3 Time of Performance; Progress Reports. The Developer shall submit all Design Development Drawings, commence and complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in this Agreement. Construction of the Improvements shall be commenced on or before the time established therefor in the Schedule of Performance. Once construction is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than fifteen (15) days except when due to causes beyond the control and without the fault of Developer as set forth in Section 7.1(e). During the course of construction and prior to issuance of the Certificate of Completion, Developer shall provide timely reports of the progress of construction when requested by the Executive Director. Developer shall complete construction of all of the Improvements on the Site within fourteen (14) months after the first to occur of (i) commencement of construction or (ii) the time established by this Agreement for commencement of construction.

4.4 Cost of Construction. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Developer; excepting for the disbursement by Agency of the Agency Disbursement Amount by the Agency as provided herein. All fees imposed by any governmental entity in connection with the acquisition of the Site or the development of the Improvements shall be borne by Developer and shall be paid when due by Developer.

4.5 Insurance Requirements. Commencing as of Lease and continuing throughout the Required Covenant Period, Developer shall maintain at Developer's sole expense, with insurers reasonably approved by Agency, the following policies of insurance in form and substance reasonably satisfactory to Agency:

(a) workers' compensation insurance and any other insurance required by law in connection with the Improvements or other work performed on the Site (to be in effect only while work is being performed on the Site);

(b) upon commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite and the materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by the Executive Director from time to time, and in no event less than \$2,000,000 for "single occurrence;"

DRAFT
FOR STUDY PUROSES ONLY

(e) property damage insurance in amounts reasonably required by the Executive Director from time to time, and in no event less than \$2,000,000; and

(f) all other insurance reasonably required by the Executive Director from time to time.

All such insurance shall provide that it may not be canceled or materially modified without 30 days prior written notice to Agency. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to Agency, showing Agency as an additional insured and loss payee. Agency shall be an additional insured in the policies required under subparagraphs (d) and (e). No such insurance shall include deductible amounts to which Agency has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by Agency) shall be delivered to Agency from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Developer shall deliver to Agency evidence of renewal or replacement of such policy reasonably satisfactory to the Executive Director.

Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by Agency or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and Agency. None of the above-described policies shall require Developer to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the Executive Director. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A or better in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." The required certificate shall be furnished by Developer at the time set forth herein.

4.5.2 Waiver of Subrogation. Developer hereby waives all rights to recover against Agency (or any officer, employee, agent or representative of Agency) for any loss incurred by Developer from any cause insured against or required by any Project Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Developer shall use its best efforts to obtain only policies which permit the foregoing waiver of subrogation.

4.6 Obligation to Repair and Restore Damage Due to Casualty. If during the period of construction the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed fourteen (14) months from the date Developer obtains insurance proceeds unless the Executive Director, in his or her sole and absolute discretion, approves a longer period of

time. Agency shall cooperate with Developer, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Improvements by giving notice to Agency (in which event Developer will be entitled to all insurance proceeds but Developer shall be required to remove all debris from the Site) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction, and the Agency may pursue remedies of its choosing under this Agreement, including without limitation termination.

4.7 Indemnity. Developer shall defend (by counsel satisfactory to Agency), indemnify and save and hold harmless Agency and City and their officers, contractors, agents and employees (collectively, the “Indemnitees”) from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys’ fees and court costs) arising from or relating to: (i) this Agreement (including without limitation Section 4.9 hereof); (ii) the disbursement of the Agency Disbursement Amount; (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; or (v) the ownership, occupancy or use of the Site. Notwithstanding the foregoing, Developer shall not be obligated to indemnify the Agency with respect to the consequences of any act of gross negligence or willful misconduct of the Agency. Developer’s obligations under this Section 4.7 shall survive the issuance of the Certificate of Completion and termination of this Agreement; the requirements under this Section 4.7 are in addition to and do not limit the obligations of the Developer under the Agency Lease.

The Developer shall reimburse the Agency immediately upon written demand for all costs reasonably incurred by the Agency (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of Agency) in connection with the enforcement of the Project Documents and all related matters including the following: (a) the Agency’s commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which the Agency is indemnified under the Project Documents. Such reimbursement obligations shall bear interest from the date occurring ten (10) days after the Agency gives written demand to the Developer at the Applicable Interest Rate. Such reimbursement obligations shall survive the issuance of the Certificate of Completion and termination of this Agreement and are in addition to and do not limit the obligations of the Developer under the Agency Lease.

The Developer shall indemnify the Agency from any real estate commissions or brokerage fees which may arise from this Agreement or the Site, including without limitation the acquisition of the Site by the Developer, or the leasing of dwelling units on the Site. The Developer represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer agrees to hold the Agency harmless from any claim by any broker, agent or finder in connection with this Agreement, the activities by the Developer, or the Site.

This Section 4.7 is not intended to expand, negate, nullify or modify the limited recourse of the Agency against the Developer provided in Section 7.17 of this Agreement.

DRAFT
FOR STUDY PUROSES ONLY

4.8 Rights of Access. Prior to the issuance of the Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. Agency representatives shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 4.8.

4.9 Compliance With Laws. Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards (including without limitation provisions for payment of prevailing wages in connection with all construction of the Improvements), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* The payment of prevailing wages is a material factor in the willingness of the Agency to enter into this transaction and the determination of the amount of the Agency's financial participation under this Agreement and, but for the payment of prevailing wages, the amount of Agency financial participation would be materially lower in the event the Agency elected to approve this Agreement.

4.10 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

4.11 Taxes and Assessments. Subject to Developer's right to contest taxes and assessments as provided in Section 7.2(c) of the Agency Lease, Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof which is owned or leased by Developer, or assure the satisfaction thereof within a reasonable time, but in no event to exceed sixty (60) days. The Developer shall additionally defend, indemnify, and hold harmless the Agency and the City from and against any taxes, assessments, mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with (a) activities undertaken by the Developer or (b) the Site. Utilities shall be gang metered and Developer shall pay City's utility user taxes.

4.12 Liens and Stop Notices. Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements the Developer shall within thirty (30) days of such recording or service or within five (5) days of Agency's demand whichever last occurs:

- (a) pay and discharge the same; or
- (b) affect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount, or otherwise; or

(c) provide Agency with indemnification from the Title Company against such lien or other assurance which Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.

4.13 Certificate of Completion. Promptly after completion of the Improvements in conformity with this Agreement, Agency shall furnish the Developer with a “Certificate of Completion,” substantially in the form of attached hereto. Agency shall not unreasonably withhold such Certificate of Completion. The Certificate of Completion shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion shall so state. If Agency refuses or fails to furnish a Certificate of Completion after written request from Developer, Agency shall, within fifteen (15) days of receipt of written request therefor, provide Developer with a written statement of the reasons Agency refused or failed to furnish the Certificate of Completion. The statement shall also contain Agency’s opinion of the actions Developer must take to obtain the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.14 Further Assurances. Developer shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Agency all documents, and take all actions, reasonably required by Agency from time to time to confirm the rights created or now or hereafter intended to be created under the Project Documents or otherwise to carry out the purposes of the Project Documents.

4.15 Financing of the Improvements.

4.15.1 Approval of Financing. As required herein and as an Agency Condition Precedent to the disbursement of the Agency Disbursement Amount, Developer shall submit to Agency evidence that Developer has obtained sufficient equity capital or has arranged for and obtained a binding commitment for construction financing necessary to undertake the development of the Site and the construction of the Improvements in accordance with this Agreement (“Proof of Financing Commitments”).

The Agency shall reasonably approve or disapprove such evidence of financing within twenty (20) days of receipt of each of the respective submittals, provided that such submittal is complete. Approval shall not be unreasonably withheld so long as the terms and conditions of the financing are consistent with this Agreement, including without limitation acknowledgment and consent by such lender to the Agency Developer CC&Rs, and are otherwise reasonable and customary. Such consent may be included in an “Inter-Creditor Agreement” in connection with which the Agency will agree to subordinate, for the benefit of such lender, the obligation to pay Residual Receipts Rent (and amounts due under the Agency Note, which are to be repaid from Residual Receipts) in the event such lender should acquire the Developer’s fee interest in the Site upon foreclosure by such lender. The failure or refusal by the Agency to approve financing that does not satisfy the foregoing criteria shall conclusively be deemed to be reasonable. If Agency shall disapprove any such evidence of financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall endeavor to promptly obtain and submit to Agency new evidence of financing. Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 4.15.1 for the approval or disapproval of the evidence of financing as initially submitted to Agency. Developer shall close the approved financing prior to or concurrently with the Closing.

DRAFT
FOR STUDY PUROSES ONLY

The Proof of Financing Commitment shall include a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction and completion of the Improvements.

(a) **Tax Credits.** The parties intend that the Developer is to obtain equity financing for the construction and operation of the Development including the use of Tax Credits and obtaining capital contributions from limited partners in the Developer in consideration primarily for the receipt of the Tax Credits received by the Developer with respect to the Development. In the event a preliminary reservation of Tax Credits is not obtained by the Developer or the Developer is unable to cause Tax Credits to be marketed generating capital for construction of the Improvements concurrent with the issuance of multifamily conduit revenue bonds, as a provided in subsection (b) of this Section 4.15.1, this Agreement shall be subject to termination by the Agency. The following requirements must be satisfied in order for the financing utilizing Tax Credits to be approved by the Agency pursuant to this Section 4.15.1:

(i) The equity investment of the limited partners shall not be less than thirty percent (30%) of the Tax Credits awarded, as reasonably determined by the Executive Director.

(ii) Not less than fifty percent (50%) of such equity investment shall be payable no later than the completion of construction of the Improvements, as evidenced by the issuance of the Certificate of Completion for the Improvements.

The Developer understands and agrees that Developer and/or one or more of the Principals of Developer may be required to provide an operating deficit guaranty, tax credit recapture guaranty, and/or other guaranties which may be required with respect to the limited partners' investment in the Development. If required for such financing, the execution of such guaranties shall be an additional Condition Precedent for the purposes of Section 3.1.

Developer shall submit the following documents as evidence of financing: (a) a copy of a legally binding, firm and enforceable loan commitment(s) or approval(s) obtained by the Developer from unrelated financial institutions for the mortgage loan or loans for financing to fund the construction of the Development, subject to such lenders' reasonable, customary and normal conditions and terms, (b) a limited partnership agreement or funding agreement from the equity investors in the Development which demonstrates that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and a current financial statement of Developer, (c) a copy of a Preliminary Reservation of Tax Credits from the California Tax Credit Allocation Committee for Tax Credits for the construction of the Development (or other evidence satisfactory to the Executive Director that Tax Credits will be available in connection with the issuance of the Bonds), (d) a binding agreement for the purchase of the Tax Credits, and/or (e) other documentation satisfactory to Agency as evidence of other sources of capital, all of which together are sufficient to demonstrate that the Developer has adequate funds to construct and complete the Development.

(b) **Multifamily Conduit Revenue Bond Financing.** The parties intend that, subject to the satisfaction of those requirements set forth in this subsection (b) of Section 4.15.1, an issue of multifamily conduit revenue bonds ("Bonds") may be considered in connection with the financing of the Development. The Developer agrees and acknowledges that; (i) the consideration of

DRAFT
FOR STUDY PURPOSES ONLY

the issuance of Bonds requires approval after a public hearing of the City or Agency, apart from the approval of this Agreement, and that there is no assurance that such approval will be given; (ii) an allocation process administered by an agency of the State of California is required in connection with the issuance of Bonds, and the Developer and not the Agency would be fully responsible for preparing application with the participation of the Agency or the City, obtaining approval, and complying with conditions imposed as part of such a process; (iii) if bonds are obtained for the Improvements, they are to be issued by the Agency or the City; (iv) any bonds issued by the Agency or City in connection with the Development would only be a conduit issuance, with no liability of the City or Agency excepting only the payment of moneys received from the Developer in accordance with the state law pursuant to which the Bonds are issued, and with credit support in the form of a letter of credit by one of the ten largest banks in California or another lender approved by the Agency Executive Director at his sole discretion; (v) any bonds issued by the Agency or City would be rated by one of the two largest rating agencies with one of the three highest investment-grade ratings, and on terms customary and reasonably acceptable to the Agency Executive Director; (vi) all costs in connection with the issuance of such bonds, including without limitation costs of issuance, the cost of credit support, ratings, and insurance, shall be borne by the Developer directly or as part of the matters funded by the bonds and the City or Agency shall be entitled to an initial and annual issuer's fee of 1/8 of 1% of the initial principal amount of the Bonds in, in addition to its out of pocket expenses and fees of Bond Counsel and a financial adviser to the Agency; and (vi) the term of the bond(s) shall not exceed thirty-four (34) years nor be less than twenty (20) years but may be due in fifteen (15) years.

(c) **AHP and MHP Funding.** The Developer is seeking funding in the approximate amount of \$500,000 under the Federal Home Loan Bank's AHP Program (the "AHP Funding") and approximately Two Million Five Hundred Thousand Dollars (\$2,500,000) under the State of California's MHP Program ("MHP Funding"). If AHP Funding and/or MHP Funding is obtained by the Developer on or before August 31, 2006, such funds shall not be treated as "Gross Revenues" for purposes of the DDA (or its attachments). AHP Funding shall be applied in a manner to be mutually agreed upon by the Executive Director (on behalf of the Agency) and the Developer; provided that the application of such AHP Funding and/or MHP Funding shall conform to the regulations for the AHP Program and the State's MHP program.

4.15.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and subleases and subleases-back on the Developer's leasehold shall be permitted before the completion of the Improvements only with the Agency's prior written approval, which shall not be unreasonably withheld as more fully described in Section 4.15.2, but only for the purpose of securing loans of funds to be used for financing the construction of the Improvements (including architecture, engineering, legal, construction period carrying costs such as property taxes, insurance and interest, and related direct costs as well as indirect costs) on or in connection with the Site, and the obtaining of a permanent loan in the amount of the outstanding balance of the construction loan. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust on the Site exceed the projected Developer's cost, as evidenced by a pro forma and a construction contract which have been delivered to the Executive Director prior to the Date of this Agreement and which set forth such costs, unless the written approval of the Executive Director is first obtained. The Developer shall notify the Agency in advance of any mortgage, deed of trust or sublease and sublease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Improvements. The words "mortgage" and "trust deed" as used hereinafter shall include sublease and sublease-back. . Upon receipt of Developer's request therefor, Agency agrees to subordinate the

DRAFT
FOR STUDY PUROSES ONLY

Agency Deed of Trust and its rights to receive Residual Receipts (under the Agency Note and, as Residual Receipts Rent, under the Agency Lease) to Permitted Senior Liens, so long as such lender(s) agree to provide reasonable notice and the right but not the obligation for the Agency to cure. The Agency authorizes the Executive Director to execute such instruments on behalf of the Agency without necessity of further action by the governing board of the Agency.

4.15.3 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust on the Site authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct, complete, or operate the Improvements or any portion thereof, or to guarantee such construction, completion or operation; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

4.15.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as to the Site as provided herein, whenever the Agency may deliver any notice or demand to Developer with respect to any breach or default by the Developer under this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand; provided that the failure to notify any holder of record shall not vitiate or affect the effectiveness of notice to the Developer. Each such holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage or deed of trust. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement reasonably satisfactory to the Agency. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, but on a schedule which takes into account the time reasonably required for the holder to obtain title to and possession of the Site, analyze and negotiate amendments to plans, specifications, construction contracts and operating contracts or to negotiate new construction contracts and operating contracts. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 4.13 of this Agreement, to a Certificate of Completion. It is understood that a holder shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such sixty (60) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

4.15.5 Failure of Holder to Complete Improvements. In any case where, sixty (60) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from Agency of a default by the Developer in completion of construction of any of the Improvements under this Agreement, and such holder is not vested with ownership of the Site and has not exercised the option to construct as set forth in Section 4.15, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the Agency may purchase the mortgage or deed of trust by payment to the holder of the amount of the

DRAFT
FOR STUDY PURPOSES ONLY

unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any, incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any improvements made by such holder;
- (e) An amount equivalent to the interest that would have accrued at the rate(s) specified in the holder's loan documents on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency; and
- (f) Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer.

The foregoing rights shall be in addition to those measures set forth in an Inter-Creditor Agreement, and in addition shall supplement and not limit the Agency's rights as landlord under the Agency Lease or by operation of law.

4.15.6 Right of the Agency to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Developer whether prior to or after the completion of the construction of any of the Improvements or any part thereof (continuing until the expiration of the term of the Agency Lease), Developer shall immediately deliver to Agency a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the Agency shall have the right but no obligation to cure the default. In such event, the Agency shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the Agency in curing such default.

The Developer agrees to provide documentation evidencing the relinquishment of any and all rights to the Development and under the Agency Lease in such event; provided that the failure to provide such documentation shall not be construed to mean that the Developer retains any rights under the Agreement or the Agency Lease.

4.15.7 Limited Subordination of Covenants. It is contemplated that financing for the Development will be provided from funds of the Developer, Bond proceeds, the Agency Disbursement Amount, proceeds of a conventional construction loan, proceeds of a bridge loan and proceeds obtained in connection with the marketing by the Developer of Tax Credits. In connection with the provision of the Primary Construction Loan and the Primary Permanent Loan, in the event the lenders providing such loans (the "Construction and Permanent Lenders") inform the Developer

that they will provide financing only in the event the Agency agrees to the subordination of the Agency Deed of Trust (and such other subordination as may be requested), the Executive Director will consider such requests for subordination. Any such subordination shall be for the benefit of third party Construction and Permanent Lenders and not for the benefit of the Developer or any Related Entity.

4.15.8 Failure to Obtain Financing. In the event this Agreement is terminated, upon such termination, the Developer shall deliver to the Agency an executed assignment in a form reasonably acceptable to the Agency of the Developer's right to use all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Improvements on the Site (the "Plans"), together with copies of all of the Plans. Such assignment shall not affect the Developer's obligations or duties concerning any of the Plans, including without limitation any obligation to pay for any work done on the Plans. The Plans shall be free of liens and encumbrances, and the Developer shall use good faith, commercially reasonable efforts to deliver to the Agency an estoppel certificate in a form reasonably acceptable to the Agency from each person or entity which prepared such Plans, authorizing the Agency to use such Plans for the Site, and releasing the Agency from any responsibility or liability for paying any costs or fees for such Plans. Upon such assignment and payment therefor, the parties agree that neither shall have any further obligations or liability to the other pursuant to this Agreement.

4.16 Mechanics of Disbursement of Agency Disbursement Amount.

4.16.1 Provided that the Agency Conditions Precedent have first been satisfied, the Agency shall make available to the Developer the Agency Disbursement Amount in installments based upon the progress toward completion of the Improvements, with amounts to be disbursed based upon the Agency/Private Funds Ratio, as determined in good faith by the Executive Director; such determinations are solely for the use of the Agency in implementing its objectives pursuant to this Agreement and are not to be relied upon by any third party. Prior to each disbursement, the Developer shall submit to the Agency an "Application for Disbursement" which shall include:

A written, itemized statement, signed by a representative of the Developer which sets forth: (i) a description of the work performed, material supplied and/or costs incurred or due for which disbursement is requested; and (ii) the total amount incurred, expended and/or due for the requested disbursement. All moneys applied for and disbursed pursuant to this Section 4.16 shall be applied only for the Improvements and the statement(s) by the representative of the Developer shall so affirm. Disbursements may be used only to defray the cost of work performed on the Improvements, and only where such work is performed by (and disbursements are made to) third parties not related or connected to the Developer.

Copies of billing invoices, statements, receipts and other documents evidencing the total amount expended, incurred or due for any requested disbursement.

Mechanics lien waivers including: (i) a Conditional Waiver and Release Upon Progress Payment (California Civil Code Section 3262(d)(1)) for itself and each contractor covered by such Request Payment, (ii) an Unconditional Waiver and Release Upon Progress Payment (California Civil Code Section 3262(d)(2)) for itself and each of its contractors covering the full amount of all previous payments made to Developer, and (iii) an Unconditional Waiver and Release Upon Final

DRAFT
FOR STUDY PURPOSES ONLY

Payment (California Civil Code Section 3262(d)(4)) for its contractors who have competed their work and for whom Developer has received full payment.

A statement that the percentage and/or stage of construction corresponding to the Application for Disbursement has been substantially completed and substantially conforms to the Plans.

Subject to satisfaction of the requirements of this Section 4.16, the Agency will endeavor to make payments within ten (10) days after the submittals required pursuant to this Section 4.16 are accomplished, review by the Agency Executive Director is completed, and the Executive Director has had a reasonable opportunity to review the stage of completion. After the approval of this Agreement by the Agency, further approval by the governing board of the Agency shall not be required to authorize the disbursement of moneys pursuant to this Section 4.16.

Notwithstanding the foregoing portion of this Section 4.16, if construction draws from a construction loan for the Development are being administered by an Approved Construction and/or Permanent Lender or a major institutional lender having a rating of AA or better as reasonably approved by the Agency, the Agency will consent to such lender acting as a disbursing agent for the Agency, with moneys to be distributed based upon the Agency/Private Funds Ratio or as otherwise provided in the Disbursement Agreement, utilizing the disbursement process customarily employed by such lender. Interest earned on the Agency moneys as so placed with the construction lender shall be maintained in an insured or rated (at investment grade of AA or better), interest-bearing account, with interest to be applied to defray project costs payable to unrelated third parties. The Executive Director is authorized to enter into such agreement(s) as may be necessary or convenient to implement this Section 4.16. In addition, provided that the Agency Disbursement Amount is limited to the amount of City fees, then such Amount shall be disbursed by the Agency to the City at such time as City fees are normally collected by the City.

4.16.2 The Agency shall have no obligation to disburse any portion of the Agency Disbursement Amount unless and until all of the Agency Conditions Precedent are first satisfied and the Lease has taken place.

4.16.3 Neither the Agency nor the City shall provide any assistance pursuant to this Agreement other than the disbursement by Agency of the Agency Disbursement Amount on the terms and conditions set forth in this Agreement. Excepting only for the Agency Disbursement Amount, the Developer assumes all responsibility for any and all costs to provide the Development. All amounts disbursed by the Agency to or for the benefit of the Developer pursuant to this Agreement shall be applied to defray the cost of the Development.

4.16.4 The Developer has obtained advice from advisers of its choosing regarding this Agreement and all matters which may pertain thereto, including without limitation any consequences as to income tax or property tax, and neither the City nor the Agency has made any representations or provided any advice in connection therewith.

5. COVENANTS AND RESTRICTIONS

5.1 Use Covenants. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that the Developer shall devote the Site to the uses specified in and shall operate in conformity with this Agreement, the Agency Developer CC&Rs, the Agency Lease and the Bond Regulatory Agreement, whichever is the more restrictive in

DRAFT
FOR STUDY PUROSES ONLY

each case unless expressly provided to contrary effect herein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code. The Agency Developer CC&Rs shall, to the greatest feasible extent, be interpreted in a manner consistent with the Bond Regulatory Agreement; provided that in the event of express conflict which is required under federal law incident to the issuance of filed tax credits, the Bond Regulatory Agreement shall control.

5.2 Affordable Housing Requirements.

5.2.1 Number of Required Affordable Units and Other Units. Developer agrees to make available, restrict occupancy to, and rent all of the Required Affordable Units at Affordable Rent. Subject to minor modification if mutually approved by the parties, there shall be twenty one (21) Required Affordable Units on the Site, with affordability for those units to be provided in conformity with the Prescribed Rent Levels. An additional twenty-three (23) units shall be developed on the Site concurrent with development of the Required Affordable Units. The restriction of units in addition to the Required Affordable Units at limited rent levels, in connection with requirements for tax credits, shall not be deemed to constitute a violation of this Agreement. An example of the calculation of Affordable Rent for the Housing Units is attached hereto as Attachment No. 13 and incorporated herein. In the event the Bond Regulatory Agreement imposes stricter rent requirements, it shall control for so long as it remains in effect.

5.2.2 Duration of Affordability Requirements. The Required Affordable Units shall be maintained as rental units available at and rented to Very Low Income Households and Lower Income Households throughout the Required Covenant Period, as more particularly set forth in the Agency Developer CC&Rs.

5.2.3 Selection of Tenants. Developer shall be responsible for the selection of tenants for the Required Affordable Units in compliance with the criteria set forth in Section 5.3 of this Agreement.

5.2.4 Income of Tenants. Each tenant shall be a Very Low Income Household or a Lower Income Household which meets the eligibility requirements established for the corresponding Required Affordable Unit, and Developer shall obtain a certification from each tenant renting or leasing each housing unit which substantiates such fact. Developer shall verify the income certification of each tenant as set forth in Section 5.3 hereof. Prior to the rental or lease of any housing unit on the Site to a tenant, and annually thereafter, the Developer shall submit to Agency or its designee, at Developer's expense, a completed income computation and certification form, in a form to be provided by Agency.

5.2.5 Determination of Affordable Rent for the Housing Units. Each Required Affordable Unit shall be rented at an "Affordable Rent" to be established as provided herein:

(a) The maximum monthly rental amount for the Required Affordable Units to be rented to Very Low Income Households shall be established at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income for the Area for a household of a size appropriate to the housing unit, or, if lower, the maximum rent for such unit as determined under the Agency Regulatory Agreement.

DRAFT
FOR STUDY PURPOSES ONLY

(b) The maximum monthly rental amount for the Required Affordable Units, if any, to be rented to Lower Income Households shall be established at one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Median Income for the Area for a household of a size appropriate to the housing unit, or, if lower, the maximum rent for such unit as determined under the Agency Regulatory Agreement.

“Household size appropriate to the unit,” for the purpose of the calculation of rent herein (and without regard to actual occupancy), shall mean an amount equal to the number of bedrooms in the unit plus one (i.e., for a two-bedroom unit, 3 people; for a three-bedroom unit, four people); provided that the maximum monthly rental amount of the Required Affordable Units shall be adjusted annually by the formula set forth above upon the promulgation of revised figures concerning Median Income for the Area by regulation of the California Department of Housing and Community Development (“HCD”). Actual rent charged may be less than such maximum rent.

Notwithstanding the foregoing portion of this Section 5.2.5, the Developer agrees that rents for the Required Affordable Units shall be limited to the Prescribed Rent Levels. Development acknowledges that such Prescribed Rent Levels will further diminish rents from the Development.

5.2.6 Relationship to Bond Requirements. Notwithstanding any other provisions of this Agreement, to the extent that the regulatory agreement executed by the Developer as a requirement of issuance of multifamily housing bonds (the “Bond Regulatory Agreement”) is more restrictive with respect to the requirements applicable to tenant selection, tenant income levels and unit rent levels than as provided in this Agreement and the Agency Developer CC&Rs, the Bond Regulatory Agreement shall control and the Developer’s compliance therewith shall not be a default hereunder.

5.3 Verifications.

5.3.1 Income Verification. Developer shall verify the income of each proposed and existing tenant of the Required Affordable Units and all other units developed on the Site.

5.3.2 Annual Reports. Following the issuance of the Certificate of Completion, and on or before March 15 of each Lease Year, Developer, at its expense, shall submit to Agency or its designee the reports required pursuant to Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in the form prescribed by Agency. Each annual report shall cover the immediately preceding fiscal year.

The Developer shall maintain on file each tenant’s executed lease and Income Verification and rental records for all of the Required Affordable Units and all other units developed on the Site. The Developer shall maintain complete and accurate records pertaining to the Required Affordable Units and will permit any duly authorized representative of the Agency to inspect the books and records of the Developer pertaining to this Agreement and the Required Affordable Units. The Developer shall prepare and submit to the Agency (or its designee) annually commencing March 15, 2008 and continuing throughout the Required Covenant Period, a Certificate of Continuing Program Compliance. Such documentation shall state for each Required Affordable Unit the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determine compliance with the terms of this Agreement.

DRAFT
FOR STUDY PUROSES ONLY

As part of its annual report, the Developer shall include a statement of amounts payable by Developer under this Agreement (including the Agency Lease) supported by an Audited Financial Statement (prepared by an independent accounting firm reasonable acceptable to the Agency) which sets forth information in detail sufficient for adequate review by the Agency for the purposes of confirming those amounts payable by the Developer to the Agency as well as showing the general financial performance of the Affordable Housing Project (“Annual Financial Report”). Each Annual Financial Report shall include a profit and loss statement showing Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve and Rental Receipts, all certified by the Audited Financial Statement. In the event the amounts reported or paid deviate by five percent (5%) or more from that amount determined to be owing upon review of the Developer’s submittal, Developer shall reimburse Agency for its cost to review (which may require engagement of auditors) and collect the amounts owing; such amounts shall, until paid, be added to the amount payable under the Agency Lease.

5.4 Maintenance of Site. Developer agrees for itself and its successors in interest to the Site, to maintain the improvements on the Site in conformity with the City Municipal Code and the conditions set forth in the Agency Developer CC&Rs, and shall keep the Site free from any accumulation of debris or waste materials. During such period, the Developer shall also maintain the landscaping planted on the Site in a healthy condition.

5.5 Nondiscrimination Covenants. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

DRAFT
FOR STUDY PUROSES ONLY

“That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

5.6 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project Area of the Redevelopment Plan. Agency shall have the right, if the Agreement or any covenants in any agreement pursuant to this Agreement, including without limitation the Agency Developer CC&Rs and the Agency Lease, are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and such covenants may be entitled.

6. DEVELOPER’S GENERAL REPRESENTATIONS AND WARRANTIES.

As a material inducement to Agency to enter into this Agreement, Developer represents and warrants to Agency that:

6.1 Formation, Qualification and Compliance. Developer (a) is a California limited partnership validly existing and in good standing under the laws of the State of California; (b) has all requisite and the authority to conduct its business and own, purchase, improve and sell its properties. Developer is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental agency that are necessary for the transaction of its business; (c) Developer has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (d) Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Developer to carry out its obligations hereunder; (e) There are no material pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by the Developer to the Agency in this Agreement which could materially adversely affect the ability

DRAFT
FOR STUDY PUROSES ONLY

of the Developer to carry out its obligations hereunder; and (f) There is no action or proceeding pending or, to the Developer's best knowledge, threatened, looking toward the dissolution or liquidation of the Developer and there is no action or proceeding pending or, to the Developer's best knowledge, threatened by or against the Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Developer to carry out its obligations hereunder.

Each of the foregoing items (a) to (f), inclusive, shall be deemed to be an ongoing representation and warranty. The Developer shall advise the Agency in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (f), inclusive.

6.2 Execution and Performance of Project Documents. Developer has all requisite authority to execute and perform its obligations under the Project Documents. The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Project Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer.

6.3 Covenant Not to Transfer Except in Conformity. The Developer shall not sell, lease, or otherwise transfer or convey all or any part of the Site, or any interest therein, unless the Developer has first obtained the prior written consent of the Executive Director, which consent may be granted or refused in the Executive Director's sole and absolute discretion; except Agency shall upon receipt of written request therefor consent to a sale by Developer of its interest in the Development to the Corporation for Better Housing, Managing General Partner of 10777 Poplar St., L.P., after the expiration of the tax credit period. In addition, Developer's limited partner and any successor thereto, may, without the prior consent of the Agency and except as set forth in the senior permitted liens, sell, transfer, assign, pledge, hypothecate, and encumber some or all of its partnership interests in the Developer and the same shall not be a violation of this Agreement. Moreover, Developer's limited partner and any successor thereto, shall have the right, without the prior consent of the Agency and except as set for in the senior permitted liens, to remove any or all of Developer's general partners for cause as permitted under Developer's limited partnership agreement and replace any or all removed general partners with a person or entity determined in the limited partner's sole discretion. Any sale, lease, transfer or conveyance without such consent shall, at Agency's option, be void. A change in ownership of the Developer resulting in the individuals executing this Agreement on behalf of Developer retaining less than fifty-one percent (51%) ownership of all outstanding shares of Developer shall be deemed to violate this Section 6.3. In connection with the foregoing consent requirement, Developer acknowledges that Agency relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of all of the Improvements, and the marketing and rental of the Required Affordable Units to Very Low Income Households and Lower Income Households to afford the community a long-term, quality affordable housing resource.

7. DEFAULTS, REMEDIES, AND TERMINATION.

7.1 Default Remedies. Subject to the extensions of time set forth in Section 7.12 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default. Except as otherwise expressly provided in this

DRAFT
FOR STUDY PUROSES ONLY

Agreement, and without limiting or affecting rights of parties hereto to terminate this Agreement, the claimant shall not institute any proceedings against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy the specified Default and shall complete such cure, correction or remedy with diligence.

7.2 Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement; provided, that the Agency shall have no right, in any event, to impose a lien for monetary damages against the Site or on any improvements erected from time-to-time on the Site. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, in an appropriate municipal court that county.

7.3 Termination by the Developer. In the event that: (i) the Developer is not in default under this Agreement and Agency does not execute the Agency Lease and attempt to effect the Lease to the Developer in the manner and condition and by the date provided in this Agreement; or (ii) on or before the Bond Deadline, the Developer fails to obtain either approval by the CDLAC for the issuance of multifamily housing bonds for the Development, or (iii) in the event of any default of Agency prior to the Lease which is not cured within the time set forth in Section 7.1 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, then this Agreement may, at the option of the Developer, be terminated by Notice thereof to Agency; provided that the Developer shall have delivered to the Agency the documents required to be delivered to the Agency pursuant to Section 4.15.8 of this Agreement. From the date of the Notice of termination of this Agreement by the Developer to Agency and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

7.4 Termination by Agency. In the event that the Developer fails to obtain an allocation for private activity bonds from CDLAC by the Bond Deadline or to provide by the Bond Deadline evidence satisfactory to the Executive Director that tax credit proceeds will be available for the Development concurrent with the issuance of Bonds, or if prior to the time established in the Schedule of Performance for the satisfaction of the Agency's Conditions Precedent:

7.4.1 Developer (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or

7.4.2 Developer does not fulfill the Agency Conditions Precedent and such failure is not caused by Agency; or

7.4.3 Developer fails to execute (as lessee/covenantor or maker) the Agency Developer CC&Rs, the Agency Lease or the Agency Note; or

7.4.4 Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 7.1 hereof;

then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of Agency, be terminated by Agency by Notice thereof to the Developer. From the date of the Notice of termination

DRAFT
FOR STUDY PUROSES ONLY

of this Agreement by Agency to the Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties, except that Agency may pursue any remedies it has hereunder.

7.5 Acceptance of Service of Process. In the event that any legal action is commenced against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced against the Developer, service of process on the Developer shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

7.6 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

7.7 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.8 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.9 Further Assurances. In the event Bonds are issued in connection with the Development, the parties will review and, if appropriate amend covenant and reporting provisions hereof to encompass such other units as may be regulated by virtue of the Bonds.

7.10 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts or omissions of another party, or acts or failures to act of the City or any other public or governmental agency or entity (excepting that acts or failures to act of Agency or City shall not excuse performance by Agency or City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer. The Agency Executive Director shall have the authority to approve extensions on behalf of Agency to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days. Notwithstanding any provision of this Agreement to the contrary, the inability to obtain an allocation by CDLAC or the lack of issuance of the Bonds, for any reason, or the lack of funding to complete the Development shall not constitute grounds of enforced delay pursuant to this Section 7.10. This Section 7.10 shall not be deemed applicable to the Agency Lease unless expressly incorporated by reference therein.

7.11 Transfers of Interest in Agreement or of Site. Section 7.11, and all subsections of this Section 7.11, shall apply to transfers prior to the Lease. Any transfers occurring or proposed after the Lease are subject to the provisions therefor of the Agency Developer CC&Rs. In the event of conflict between the provisions of this Section 7.11 and the Agency Sublease (concerning transfers of interest), the Agency Sublease shall control.

7.11.1 Prohibition. The qualifications and identity of the Developer are of particular concern to Agency. It is because of those qualifications and identity that Agency has entered into this Agreement with the Developer. For the period commencing upon the date of this Agreement and until the end of the Required Covenant Period, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Development thereon (excepting the rental Lease of Units to Occupants) without prior written approval of Agency, except as expressly set forth herein.

7.11.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the Agency shall not unreasonably withhold its approval of an assignment of this Agreement or conveyance of the Site, or any part thereof, in connection with any of the following:

(a) Any transfers to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Development.

In the event of a proposed assignment by Developer under subparagraphs 7.11.2 through 7.11.3, inclusive, Developer agrees that at least thirty (30) days prior to such assignment it shall give written notice to Agency including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Developer the Obligations of this Agreement. In addition, no consent of the Agency shall be required in connection with the transfer of the Site that occurs by foreclosure or deed in lieu of foreclosure of any Permitted Senior Lien to respective holder thereof or to their nominees or assignees exclusive of the Developer and Charles Brumbaugh.

7.11.3 Agency Consideration of Requested Transfer. Agency agrees that it will consider in good faith a request made pursuant to this Section 7.11 after the achievement of occupancy of ninety percent (90%) or more of the Housing Units in conformity with this Agreement following the issuance by Agency of a Certificate of Completion for the last building to be constructed as part of the Improvements, provided the Developer delivers written notice to Agency requesting such approval and provided further that the Bond Regulatory Agreement and the Agency Developer CC&Rs remain in full force and effect. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, its financial commitments and resources, and the financial terms of such assignment (including the consideration proposed to flow to the Developer or Related Entity and/or any of the Principals) in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 7.11, and as reasonably determined by

DRAFT
FOR STUDY PUROSES ONLY

Agency. Notwithstanding the foregoing, the transfer of limited partnership interests to tax credit investors shall not entitle the Agency to receive compensation (in connection with such transfer to tax credit investors). Agency shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the Development, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 7.11 applies, which Agency reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be required for all proposed assignments. The Developer agrees and acknowledges that in connection with any such assignment approved by the Agency pursuant to this Agreement, the Developer shall remain liable for performance pursuant to this Agreement for a period of five (5) years following such assignment; provided that the five-year limitation shall not apply (and the ongoing liability of Developer shall not be thereby limited) in connection with the transfer of limited partnership interests to tax credit investors. Within thirty (30) days after the receipt of the Developer's written notice requesting approval of an assignment or transfer pursuant to this Section 7.11, including assignments that do not require Agency/Agency Executive Director approval, Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to Agency such further information as may be reasonably requested.

7.11.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

7.11.5 Assignment by Agency. Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of the Developer, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of the Developer.

7.12 Non-Liability of Officials and Employees of Agency. No member, official, officer or employee of Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by Agency (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

7.13 Relationship Between Agency and Developer. It is hereby acknowledged that the relationship among the Agency and Developer is not that of a partnership or joint venture and that Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, neither the Agency nor the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Development.

7.14 Agency and City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director is authorized to act on behalf of the Agency unless specifically provided otherwise or the law otherwise requires. When a reference is made herein to an action or approval to be undertaken by the City the City Manager is

authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

7.15 Real Estate Brokers. Agency and Developer each represent and warrant to each other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

7.16 Attorneys' Fees. In any action among the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

7.17 Non-recourse Liability of Developer. Notwithstanding anything to the contrary in this Agreement or any other Project Document, neither Developer nor any of its partners shall be personally liable for any default, loss, claim, damage, expense or liability to any person and the sole remedy against Developer hereunder shall be limited to its interest in the Development.

8. MISCELLANEOUS

8.1 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of Agency to Developer, or any other claim by Developer against Agency, in connection with the Site or otherwise, Developer hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Developer's obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Project Documents.

8.2 Notices. All notices, demands, approvals and other communications provided for in the Project Documents shall be in writing and be delivered to the appropriate party at its address as follows:

If to Developer: 10777 Poplar St., L.P.
15303 Ventura Blvd., Suite 1100
Sherman Oaks, CA 91403
Telephone: (818) 247-4303
Telecopier: (818) 247-1451

If to Limited Partner: c/o 10777 Poplar St., L.P.
15303 Ventura Blvd., Suite 1100
Sherman Oaks, CA 91403
Telephone: (818) 247-4303
Telecopier: (818) 247-1451

DRAFT
FOR STUDY PUROSES ONLY

If to Agency: Loma Linda Redevelopment Agency
22541 Barton Road
Loma Linda, CA 92354
Attn: Executive Director

with copy to: Secretary
Loma Linda Redevelopment Agency
22541 Barton Road
Loma Linda, California 92354

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

8.3 Survival of Representations and Warranties. All representations and warranties in the Project Documents shall survive the Lease and the rental of the Required Affordable Units and have been or will be relied on by Agency notwithstanding any investigation made by Agency.

8.4 No Third Parties Benefited Except for City. This Agreement is made for the purpose of setting forth rights and obligations of Developer and Agency, and no other person (except for the City) shall have any rights hereunder or by reason hereof. Except for the City, which shall be deemed to be a third party beneficiary of this Agreement (including without limitation the Attachments hereto), there shall be no third party beneficiaries of this Agreement.

8.5 Binding Effect; Assignment of Obligations. This Agreement shall bind, and shall inure to the benefit of, Developer and Agency and their respective successors and assigns. Developer shall not assign any of its rights or obligations under any Project Document without the prior written consent of the Executive Director, which consent may be withheld in the Executive Director's sole and absolute discretion. Any such assignment without such consent shall, at Agency's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that Agency relied upon Developer's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the use of the Required Affordable Units in conformity with this Agreement.

8.6 Counterparts. Any Project Document may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

8.7 Prior Agreements; Amendments; Consents. This Agreement (together with the other Project Documents) contains the entire agreement between Agency and Developer with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters are superseded by this Agreement and such other Project Documents. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 41 and Attachments 1 through 14, which constitutes the entire understanding and agreement of the parties.

DRAFT
FOR STUDY PURPOSES ONLY

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the Agency and the Developer.

8.8 Governing Law. All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Bernardino or the United States District Court of the Central District of California, as Agency may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Project Documents. Assuming proper service of process, Developer also waives any objection regarding personal or in rem jurisdiction or venue.

8.9 Severability of Provisions. No provision of any Project Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Project Documents are hereby declared to be severable.

8.10 Headings. Article and section headings are included in the Project Documents for convenience of reference only and shall not be used in construing the Project Documents.

8.11 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Project Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

8.12 Time of the Essence. Time is of the essence of all of the Project Documents.

8.13 Conflict of Interest. No member, official or employee of Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.14 Warranty Against Payment of Consideration. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

DRAFT
FOR STUDY PUROSES ONLY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

DEVELOPER:

10777 POPLAR ST., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

AGENCY:

LOMA LINDA REDEVELOPMENT AGENCY, a
public body, corporate and politic

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

Pamela Byrnes-O'Camb, Secretary

DRAFT

FOF STUDY PURPOSES ONLY

ATTACHMENT NO. 1

SITE MAP

[To come]

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

[To come]

APN: [parcels: to come]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

For the purposes of this Schedule of Performance, the “Date of Agreement” is March 1, 2006. The Executive Director may extend by not more than sixty (60) days the time under this Schedule of Performance by which any obligation of Developer shall be performed.

- | | |
|---|--|
| 1. <u>Satisfaction of Agency Conditions Precedent</u> . Developer shall satisfy the Agency Conditions Precedent. | Not later than October 3, 2006. |
| 2. <u>Closing</u> . The Lease is effected (by the Agency Lease, to be evidenced and made of public record by the recording of the Agency Lease (or a memorandum of lease hereafter approved by Agency), to be recorded immediately following recordation of the Agency Developer CC&Rs), with the recorded Agency Developer CC&Rs and the Agency Lease (or memorandum thereof) to be delivered to the Agency. | Within thirty (30) days after the satisfaction of the Agency Conditions Precedent and not later than the one hundred eightieth (180 th) day after the Date of Agreement. |
| 3. <u>CDLAC Approval</u> . The Developer shall have obtained allocation by CDLAC for the issuance of private activity bonds by the City or Agency for the Development. | Not later than October 3, 2006. |
| 4. <u>Commencement of Construction</u> . The Developer shall have commenced construction of the Improvements. | Not later than January 3, 2007. |
| 5. <u>Completion of Construction</u> . Developer shall complete construction of the Improvements. | Within fourteen (14) months after the earlier of (i) the commencement of construction or (ii) the time established in this Schedule of Performance for the commencement of construction of the Improvements. |
| 6. <u>Rental Units Occupied</u> . Developer causes the Required Affordable Units to be occupied using the Prescribed Rent Levels in conformity with the Agreement. | Within one hundred (100) days after the earlier of (i) completion of construction or (ii) the time established for completion of construction in this Schedule of Performance. |

ATTACHMENT NO. 4

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

TO: Loma Linda Redevelopment Agency
22541 Barton Road
Loma Linda, California 92354
Attention: Executive Director

The undersigned, _____, being duly authorized to execute this Certificate of Continuing Program Compliance (this "Certificate") on behalf of 10777 Poplar St., L.P., a California limited partnership (the "Developer"), hereby represents and warrants that:

1. He has read and is thoroughly familiar with the provisions of the Disposition and Development/Affordable Housing Agreement (the "DDA") by and between the Agency and the Developer dated as of March 1, 2006, including without limitation the Agency Developer CC&Rs, the Agency Lease, and other attachments thereto. Capitalized terms used herein shall have the same meaning as that set forth in the DDA; and

2. As of the date of this Certificate, the following number of completed residential units at the Site: (i) are currently occupied by Very Low Income Households at Affordable Rent; (ii) are currently occupied by Lower Income Households at Affordable Rent; or (iii) are currently vacant and being held available for occupancy by a Very Low Income Household or a Lower Income Household and have been so held continuously since the date a Very Low Income Household or a Lower Income Household vacated such unit:

Occupied at an Affordable Rent by:

Very Low Income Households (35%) _____ # of Units, Nos.: _____
Very Low Income Households (40%) _____ # of Units, Nos.: _____
Very Low Income Households (50%) _____ # of Units, Nos.: _____

Lower Income Households (60%) _____ # of Units, Nos.: _____

Vacant:

a. Held for occupancy by:

i. Very Low Income Households (35%) _____ # of Units, Nos.: _____
ii. Very Low Income Households (40%) _____ # of Units, Nos.: _____
iii. Very Low Income Households (50%) _____ # of Units, Nos.: _____
iv. Lower Income Households (60%) _____ # of Units, Nos.: _____

DRAFT
FOF STUDY PURPOSES ONLY

- b. Last occupied by:
- i. Very Low Income Households (35%) _____ # of Units, Nos.: _____
 - ii. Very Low Income Households (40%) _____ # of Units, Nos.: _____
 - iii. Very Low Income Households (50%) _____ # of Units, Nos.: _____
 - iv. Lower Income Households (60%) _____ # of Units, Nos.: _____

3. At no time since the date of filing of the last Certification of Continuing Program Compliance have less than one hundred percent (100%) of the Required Affordable Units as completed units in the Project been occupied by, or been last occupied, or have been available for occupancy by Very Low Income Households or Lower Income Households at an Affordable Rent.

4. The Developer is not in default under the terms of the Agreement, including without limitation the attachments thereto (such as the Agency Lease and the Agency Developer CC&Rs).

10777 POPLAR ST., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

(DEVELOPER)

DRAFT

FOF STUDY PURPOSES ONLY

ATTACHMENT NO. 5

[INTENTIONALLY OMITTED]

DRAFT
FOF STUDY PURPOSES ONLY

ATTACHMENT NO. 6

AGENCY LEASE

ATTACHMENT NO. 6

GROUND LEASE

By and Between

THE LOMA LINDA REDEVELOPMENT AGENCY,

AGENCY/LESSOR

and

10777 POPLAR ST., L.P.
a California limited partnership

LESSEE

Table of Contents

	<u>Page</u>
1. SUBJECT OF LEASE; DEFINITIONS.....	1
1.1 Definitions:	1
2. LEASE OF THE SITE.	8
3. LEASE TERM.....	9
4. USE OF THE SITE.	9
4.1 Use of the Site.....	9
4.2 Management.....	9
4.3 Only Lawful Uses Permitted.....	10
5. RENT.....	10
5.1 Net Lease	10
5.2 Rent	10
5.3 Payment of Rent.....	10
5.4 Capital Events	11
6. AFFORDABLE HOUSING AND OTHER OCCUPANCY REQUIREMENTS.	11
6.1 Number of Required Affordable Units and Other Units.....	11
6.2 Duration of Affordability Requirements.....	11
6.3 Selection of Tenants.....	11
6.4 Income of Tenants.....	12
6.5 Determination of Affordable Rent for the Required Affordable Units.....	12
6.6 Verifications.....	12
6.7 Regulatory Agreement	13
7. UTILITIES AND TAXES.....	14
7.1 Utilities.....	14
7.2 Real Estate Taxes.....	14
7.3 Personal Property	14
7.4 Possessory Interest	14
8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.....	15
8.1 Ownership During Term	15
8.2 Ownership at Termination	15
9. MECHANICS LIENS; FAITHFUL PERFORMANCE.	15
10. MAINTENANCE AND REPAIR; CAPITAL REPLACEMENT RESERVE.	15
11. ENVIRONMENTAL MATTERS.....	18
11.1 Definitions.....	18
11.2 Site Evaluation	18
11.3 Indemnification; Lessee's Indemnity	18
11.4 Duty to Prevent Hazardous Material Contamination.....	19
11.5 Obligation of Lessee to Remediate Premises.....	19
11.6 Storage or Handling of Hazardous Materials.....	19
11.7 Environmental Inquiries.....	20
12. ALTERATION OF IMPROVEMENTS.	20
13. DAMAGE OR DESTRUCTION.	20
13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.....	20
13.2 Continued Operations	21
13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance.....	21

Table of Contents
(continued)

	<u>Page</u>
14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.....	21
15. ANCILLARY DUTIES.....	23
16. INDEMNITY.....	23
17. INSURANCE.....	24
17.1 Insurance to be Provided by Lessee.....	24
17.2 Definition of “Full Insurable Value”	25
17.3 General Insurance Provisions.....	25
17.4 Failure to Maintain Insurance	25
17.5 Insurance Proceeds Resulting from Loss or Damage to Improvements	26
18. EMINENT DOMAIN.....	26
19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.	27
20. NONDISCRIMINATION IN EMPLOYMENT.	28
21. [INTENTIONALLY OMITTED].	28
22. COMPLIANCE WITH LAW.....	28
23. ENTRY AND INSPECTION.....	29
24. RIGHT TO MAINTAIN.	29
25. EVENTS OF DEFAULT AND REMEDIES.....	29
25.1 Events of Default by Lessee	29
25.2 Remedies of Agency.....	30
25.3 Right of Agency in the Event of Termination of Lease.....	31
25.4 Damages.....	31
25.5 Rights and Remedies are Cumulative	32
26. MISCELLANEOUS.....	32
26.1 Governing Law; Interpretation.....	32
26.2 Legal Actions	32
26.3 Acceptance of Service of Process	32
26.4 Attorneys’ Fees And Court Costs	33
26.5 Financial Statement; Inspection of Books And Records	33
26.6 Interest.....	33
26.7 Notices	33
26.8 Time is of the Essence	34
26.9 Non-Merger of Fee And Leasehold Estates	34
26.10 Holding Over	34
26.11 Conflict of Interest	34
26.12 Non-Liability of Agency Officials And Employees	34
26.13 Relationship	34
26.14 Transactions with Affiliates.....	34
26.15 Waivers And Amendments	35
26.16 Non-Merger With DDA	35
26.17 Entire Agreement; Duplicate Originals; Counterparts.....	35
26.18 Severability	35
26.19 Terminology.....	35
26.20 Recordation	36
26.21 Binding Effect.....	36
26.22 Estoppel Certificate.....	36

Table of Contents
(continued)

	<u>Page</u>
26.23 Force Majeure	36
26.24 Quiet Enjoyment	36
26.25 Agency Approvals and Actions	36
26.26 No Third Parties Benefited Except for City and Approved Leasehold Mortgagee	36

EXHIBITS

Exhibit A	Site Map	A-1
Exhibit B	Site Legal Description.....	B-1
Exhibit C	Memorandum of Lease	C-1
Exhibit D	Certificate of Continuing Program Compliance	D-1
Exhibit E	Ground Lease Rider	E-1

GROUND LEASE

This GROUND LEASE (the “Lease”) is made as of March 1, 2006 by and between the **LOMA LINDA REDEVELOPMENT AGENCY**, a public body corporate and politic (the “Agency” or “Lessor”), and **10777 POPLAR ST., L.P.**, a California limited partnership (the “Developer” or “Lessee”).

1. SUBJECT OF LEASE; DEFINITIONS.

The purpose of this Lease is to effectuate the Redevelopment Plan (“Redevelopment Plan”) for the Loma Linda Redevelopment Project (the “Redevelopment Project”). The Redevelopment Plan for the Loma Linda Redevelopment Project (the “Redevelopment Project”) was first approved by Ordinance No. 226 adopted by the City Council of the City on July 15, 1980, and has been amended by Ordinance No. 508 of the City adopted on December 13, 1994 and Ordinance No. 374 as adopted on May 12, 1987. The various component areas of the Project Area have been merged and constitute one redevelopment project area. The project area of the Redevelopment Project is referred to herein as the “Project Area”. The use of the Site for affordable housing purposes under this Agreement is of benefit to the Project Area. This Agreement is made pursuant to the Redevelopment Plan. The Developer has reviewed the Redevelopment Plan and agrees to perform under this Agreement in conformity with the Redevelopment Plan and that certain Disposition and Development/Affordable Housing Agreement, dated as of March 1, 2006 (the “DDA”), a copy of which is on file with the Agency as a public record. Except as may otherwise be expressly set forth in this Lease, all capitalized terms shall have the same meanings as set forth in the DDA.

1.1 Definitions:

“*Act*” means the Community Redevelopment Law of the State of California, Health and Safety Code Section 33000, et seq.

“*Affiliate*” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, or to make management decisions on behalf of, or independently to select to the managing partner or, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

“*Affiliated Person*” means an entity formed for the purpose of constructing, owning, and operating the Development, which includes Corporation for Better Housing or Developer as a general partner and which may include tax credit investors as limited partners.

“*Affordable Rent*” shall have the meaning set forth in the DDA.

“*Agency*” means the Loma Linda Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

DRAFT
FOR STUDY PUROSES ONLY

“*Agency Developer CC&R’s*” means Attachment No. 11 to the DDA.

“*Agency Disbursement Amount*” means an amount equal to _____ Dollars (\$ _____), which represents the amount of fees chargeable by the City in connection with the Project (other than fees chargeable in connection with the issuance of Bonds).

“*Agency Executive Director*” or “*Executive Director*” means the Executive Director of the Agency or his designee.

“*Agency Note*” means Attachment No. 13 to the DDA.

“*Agency/Private Funds Ratio*” means the ratio between the Agency Disbursement Amount and the total funds available for the construction of the Improvements by virtue of the Tax Credits, Bonds and the construction loan commitment.

“*Application Deadline*” means the thirtieth (30th) day following the time set forth in the DDA for CDLAC approval.

“*Application for Disbursement*” is defined in Section 4.16 of the DDA.

“*Area*” means the San Bernardino-Riverside Primary Metropolitan Statistical Area, as periodically defined by HUD.

“*Audited Financial Statement*” means an audited financial statement, including without limitation a profit and loss statement, generated by a third party certified public accountant acceptable to the Agency in its reasonable discretion, showing, for the previous Lease Year, on a monthly basis and in an easily readable format, Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve and Residual Receipts.

“*Basic Concept Drawings*” means those certain plans and drawings submitted to and approved by the City, as set forth in Section 4.2.1 of the DDA.

“*Bond Regulatory Agreement*” shall mean the regulatory agreement which it is contemplated may be required to be recorded against the Site with respect to the issuance of multifamily housing bonds in the event an allocation is obtained from CDLAC, as set forth in Section 5.2.6 of the DDA.

“*Bond Rules*” means Section 103(b) of the Internal Revenue Code, the rules and regulations applied by CDLAC in connection with the private activity bond allocation or the issuance of bonds thereunder and as set forth in the Indenture of Trust in connection with the issuance of the Bonds.

“*Bonds*” means multi-family housing bonds as described in the DDA.

“*Capital Events*” is defined in Section 5.4 hereof.

“*Capital Replacement Reserve*” means a reserve fund to be established by the Lessee as a capital reserve in the amount of [_____ dollars (\$_____)] year Lease Year (for the first Lease Year), which shall remain fixed for the first five Lease Years and then shall increase by fifty dollars (\$50.00) per unit annually. The Capital Replacement Reserve is more fully described in Section 10 of this Lease.

DRAFT
FOR STUDY PUROSES ONLY

“Certificate of Completion” means the document which evidences the Developer’s satisfactory completion of the Development, as set forth in Section 4.13 of the DDA, in the form of Attachment No. 10 to the DDA.

“Certificate of Continuing Program Compliance” means Exhibit “D” hereto.

“Chargeable Fees and Reserves” means each of the following, within the respective parameters therefor set forth in this Lease: (i) Capital Replacement Reserve; and (ii) Operating Reserve.

“City” means the City of Loma Linda, California, a California municipal corporation.

“City Manager” means the City Manager of the City or his designee.

“Closing” means the day on which the Closing occurs.

“Commencement” means the commencement of this Lease.

“Commencement Date” means the date of the Commencement, namely _____.

“Condition of Title” is defined in Section 2.3 of the DDA.

“County” shall mean the County of San Bernardino, California.

“Date of Agreement” means March 1, 2006.

“Debt Service” means required debt service payments for the Primary Construction Loan and/or the Primary Permanent Loan including the funding obligations in respect of all reserves or escrows required thereunder.

“Default” means the failure of a party to perform any action or covenant required by this Lease within the time periods provided herein following any applicable notice and opportunity to cure period, as may be set forth herein.

“Design Development Drawings” means those plans and drawings to be submitted to City for its approval, pursuant to Sections 4.2.1 and 4.2.2 of the DDA.

“Developer” means 10777 Poplar St. L.P., a California limited partnership.

“Development” means the new apartment complex including associated improvements as required by the DDA to be as: (i) constructed by the Developer upon the Site, with related offsite improvements, as more particularly described in the Scope of Development and (ii) operated as an affordable housing complex in conformity with this Lease, the Agency Developer CC&R’s and the Bond Regulatory Agreement.

“DDA” or *“Agreement”* means the Disposition and Development/Affordable Housing Agreement by and between the Agency and the Developer, dated as of March 1, 2006. A copy of the DDA is on file with the Agency Secretary as an official record, and is incorporated herein by reference.

DRAFT
FOR STUDY PUROSES ONLY

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Developer or the Site.

“Gross Revenues” means the total rental income and all other revenues or income received by the Lessee or its successors or assigns in connection with the Project, including without limitation Housing Rent, laundry charges, cable income, and interest earnings, but, except for any interest earned thereon, does not include (i) the proceeds of the sale of Tax Credits to finance the Development or (ii) refinancing proceeds (provided the refinancing is permitted by and is accomplished in accordance with this Lease or (iii) insurance proceeds which are used to repair or reconstruct the Project or condemnation proceeds).

“Ground Lease Rider” means Exhibit “E” to this Lease.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 6901 et seq.

“Housing Authority” means the Housing Authority of the County of San Bernardino.

“Housing Fund” means the Agency’s Low and Moderate Income Housing Fund, established pursuant to Health and Safety Code Section 33334.3.

“Housing Rent” shall mean the total of monthly payments by the tenants of a Housing Unit for (a) use and occupancy for the Housing Unit and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants of the Housing Units, other than security deposits, (c) a reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity and gas, as determined by regulation of the Housing Authority pursuant to 24 CFR Part 813 and (d) possessory interest, taxes or other fees or charges assessed for the use of the Housing Units and facilities associated therewith by a public or private entity other than the Developer.

DRAFT
FOR STUDY PURPOSES ONLY

“Housing Units” or *“Units”* means the forty-four (44) individual apartment units within the Development to be constructed and operated by the Developer on the Site, as provided in Section 4.1 of the DDA and in the Scope of Development, but excluding therefrom one additional unit which the Lessee may develop and make available to an on-site manager.

“HUD” means the United States Department of Housing and Urban Development or its successor(s).

“Improvements” means all improvements required by the DDA to be accomplished by the Developer, as more fully described in the Scope of Development.

“Income Verification” means the Income Verification in the form of Attachment No. 12 to the DDA.

“Lease” means this Ground Lease, which is referred to in the DDA as the “Agency Lease.”

“Lease Year” means the period commencing as of Commencement Date and ending as of December 31 of that calendar year, then each calendar year thereafter.

“Lower Income Household” shall mean a household earning not greater than eighty percent (80%) of median income for the Area as set forth by regulation of the California Department of Housing and Community Development, pursuant to Health and Safety Code Section 50079.5.

“Lower Income Units” means Units available to and occupied by Lower Income Households.

“Median Income” means the median income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

“Memorandum of Lease” means Exhibit “C” to this Lease.

“Net Operating Income” means Gross Revenues, less Operating Expenses, and further less Debt Service.

“Notice” shall mean a notice in the form prescribed by Section 8.2 of the DDA.

“Operating Expenses” means actual, reasonable and customary costs, fees and expenses directly incurred and for which payment has been made and which are attributable to the operation, maintenance, and management of the Project, excluding the Capital Replacement Reserve and consisting of only the following (and such additional items, if any, as to which the prior written approval of the Agency Executive Director is first obtained. Such approval shall be granted, granted subject to conditions, or refused at the sole and absolute discretion of the Agency Executive Director): painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; sewer charges; costs incurred to third parties in connection with generating laundry charges (but in no event to exceed the laundry charges); real and personal property taxes and assessments; insurance premiums; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; the actual and customary salary payable to an on-site manager which directly and exclusively benefits residents of the Project; the actual and customary salary of one assistant manager, one on-site maintenance manager and such other personnel, if any, as incurred for the

DRAFT
FOR STUDY PUROSES ONLY

hiring of unrelated third parties for on-site management, which directly and exclusively benefit residents of the Project, subject to the prior written approval of the Agency Executive Director at his sole and absolute discretion; a management fee (“Management Fee”) (excluding salaries and benefits payable to any on-site personnel) of not to exceed five and one-half percent (5 ½%) of Gross Revenues; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable and customary fees and expenses of accountants, attorneys, consultants and other professionals as incurred commencing after the completion of the Improvements (as evidenced by the issuance by City of a certificate of occupancy for the corresponding building developed as part of the Improvements) in connection with the operation of the Project; tenant improvements that are not included in the costs of the Improvements, and payments made by the Developer to satisfy indemnity obligations and other payments by the Developer pursuant to this Lease and the DDA other than to the Developer, the Developer’s partners or other related persons; provided, however, that payments to parties related to Developer for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the Audited Financial Statement and shall be broken out in line item detail.

“*Operating Reserve*” means a reserve fund to be established by the Lessee as a reserve for operating expenses in the amount of [_____ thousand dollars (\$_____)] per Lease Year (for the first Lease Year), increasing at the rate of three and one-half percent (3 ½%) annually. The Operating Reserve is more fully described in Section 10 of this Lease. Interest earned on moneys held in the Operating Reserve shall be retained in the Operating Reserve.

“*Person*” means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

“*Prescribed Rent Levels*” means rent that is Affordable Rent for households at the following income levels: (i) for one (1) one-bedroom unit, three (3) two-bedroom units, and two (2) three-bedroom units, thirty five percent (35%) of Median Income; (ii) for two (2) one-bedroom units, five (5) two-bedroom units, four (4) three-bedroom units and two (2) four-bedroom units, forty percent (40%) of Median Income; and (iii) for two (2) four-bedroom units, sixty percent (60%) of Median Income.

“*Primary Construction Loan*” means the mortgage loans obtained by the Developer from a state agency or instrumentality or a reputable and established bank, savings and loan association, or other similar financial institution for financing the development (but not the operation) of the Project pursuant to the DDA, and reimbursement obligations to approved lenders securing credit enhancement facilities.

“*Primary Permanent Loan*” means the mortgage loan obtained by the Developer from a state agency or instrumentality or a reputable and established bank, savings and loan association, or other similar financial institution, and reimbursement obligations to approved lenders.

“*Principals*” means Charles Brumbaugh.

“*Project*” means the multi-family residential rental housing development located on the Site to be constructed and operated by the Developer pursuant to this Lease and the DDA.

DRAFT
FOR STUDY PUROSES ONLY

“Project Facilities” means the buildings, structures and other improvements located on the Site, and all fixtures and other property owned, leased or licensed by the Developer and located on, or used in connection with, such buildings, structures and other improvements.

“Property Manager” means the person or organization responsible for the management and operation of the Project, the reasonable approval of which by the Agency shall be required, and which shall initially be Brackenhoff Management Group, Inc., or another manager mutually acceptable to the Agency and the Lessee.

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project, as originally adopted and amended, all as described in Section 1 hereof; the Redevelopment Plan; the Redevelopment Plan (as so amended) is deemed to be incorporated herein by reference.

“Redevelopment Project” means the Loma Linda Redevelopment Project, adopted by the City pursuant to the Redevelopment Plan (as amended through the date of this Lease).

“Regulatory Agreement” or *“Agency Developer CC&R’s”* shall mean the Regulatory Agreement which is to be recorded against the Site in accordance with Section 2.2.6 of the DDA, in the form of Attachment No. 6 to the DDA and incorporated herein.

“Related Entity” means a Principal or an entity in which any interest is held by the Developer or one or more of the Principals.

“Required Affordable Units” means twenty one (21) of the dwelling units required to be developed on the Site under the Agreement.

“Reporting Amount(s)” means the sum of Two Hundred Fifty Hundred Dollars (\$250.00) per unit per year for each dwelling unit as to which Lessee fails to deliver to Agency, during any Lease Year, a full and adequate report that conforms to Section 33418 of the California Health and Safety Code.

“Required Covenant Period” shall mean the duration of the affordable housing requirements which are set forth in this Lease.

“Residual Receipts” for a particular Lease Year means Gross Revenues for the corresponding Lease Year less (i) Debt Service payments made during such Lease Year on the Primary Construction Loan or the Primary Permanent Loan, including payments under escrow and reserve provisions thereunder in amounts not in excess of the amounts due and payable during such month (and not including prepayments), and (ii) the sum of Operating Expenses and, to the extent funded, Chargeable Fees and Reserves made during the corresponding Lease Year. All calculations of Residual Receipts shall be made annually, on or before March 15 for the preceding Lease Year, on a cash (and not accrual) basis and the components thereof shall be subject to verification and approval, on an annual basis, based upon conformity with the terms of the DDA and this Lease, by the Agency.

“Schedule of Performance” means Attachment No. 3 to the DDA.

“Scope of Development” means that certain Scope of Development attached to the DDA as Attachment No. 9 and incorporated by reference, which describes the scope, amount, and quality of

DRAFT
FOR STUDY PUROSES ONLY

the Development to be constructed by the Developer pursuant to the terms and conditions of the DDA. The Scope of Development is subject to revision only as provided in the DDA.

“*Site*” means that certain real property which is described in the Site Legal Description and depicted on the Site Map.

“*Site Legal Description*” means the description of the Site which is attached hereto as Exhibit “B” and incorporated herein.

“*Site Map*” means the map of the Site which is attached hereto as Exhibit “A” and incorporated herein.

“*Tax Credit Rules*” means Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq., and the rules and regulations implementing the foregoing.

“*Tax Credits*” shall mean 4% Low Income Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq.

“*TCAC*” means the California Tax Credit Allocation Committee.

“*Term*” or “*Term of the Agency Lease*” means that approximately sixty (60) year period as so described in this Lease. The Term consists of fifty nine (59) complete calendar years plus one complete or partial year (depending upon the Commencement Date).

“*Title Company*” means Alliance Title Company or another mutually acceptable title insurer.

“*Title Policy*” means the policy of title insurance to be provided to the Developer for its leasehold interest, as set forth in Section 2.4 of the DDA.

“*Title Report*” means the preliminary title report for the Site, as described in the DDA.

“*Unit*” means each of the forty-four (44) dwelling units required to be developed by the Developer under the DDA and this Lease.

“*Very Low Income Household*” shall mean a household earning not greater than fifty percent (50%) of median income for the Area, as set forth by regulation of the California Department of Housing and Community Development, pursuant to Health and Safety Code Section 50105.

“*Very Low Income Units*” means Units available to and occupied by Very Low Income Households.

“*Year*” means a fiscal year beginning as of July 1 and ending June 30 of the following calendar year or such other annual period as may be mutually agreed to by Agency and Lessee.

2. LEASE OF THE SITE.

Agency, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby

DRAFT
FOR STUDY PUROSES ONLY

leases to Lessee, and Lessee hereby leases from Agency, that certain real property in the City of Loma Linda (the “City”) shown on the “Site Map” attached hereto as Exhibit ”A” and incorporated herein by this reference, and having the legal description in the “Site Description” attached hereto as Exhibit “B” and incorporated herein by this reference (the “Site”). Except as expressly provided to the contrary in this Lease, reference to the Site is to the described land, exclusive of any improvements now or hereafter located on the land, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property.

3. LEASE TERM.

Lessee shall lease the Site from Agency and Agency shall lease the Site to Lessee for a term commencing on _____ (the “Commencement Date”) and continuing for a period of sixty (60) years thereafter (the “Term”), unless sooner terminated as provided for herein.

4. USE OF THE SITE.

4.1 Use of the Site. Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Lessee shall, by the respective times established therefor in the Schedule of Performance (in the DDA), commence and complete the Development in conformance with the approved Design Development Drawings (in the DDA), all applicable laws, and thereafter the Site and the Improvements shall be devoted to those uses as set forth in the Lease, the DDA, and the Redevelopment Plan. Lessee shall apply for and obtain all necessary permits, and shall complete the Improvements as provided by the DDA. In the event of any inconsistency between this Lease, the DDA, or the Redevelopment Plan, the most restrictive of the documents shall control.

4.2 Management. Lessee shall manage or cause the Site and the Improvements to be managed in a prudent and business-like manner, consistent with other newly-constructed rental housing projects, including market rate projects, in San Bernardino County, California, and in conformity with the Regulatory Agreement.

Lessee has contracted with a management company or manager, which subject to Section 26.14 of the DDA, may be an affiliate of Lessee, to operate and maintain the Site and the Improvements in accordance with the terms of this Lease (hereinafter “Property Manager” or “Management Company”); the selection and hiring of such management company was subject to, and the selection of any other manager shall be subject to, approval by Agency Executive Director.

The Lessee shall submit for the approval of the Agency a “Management Plan” which sets forth the duties of the Property Manager.

Lessee shall submit or shall cause its Property Manager to submit to the Agency Executive Director on or before the sixtieth (60th) day following commencement of the Term, and each anniversary thereof, an annual budget for the ongoing operation of the Project. Each of the Lessee and the Agency shall cause its respective representative(s) to meet during the thirty (30) days following the receipt of the annual budget to review the budget; such review is without obligation to either party to propose or agree to any modification of permitted Operating Expenses.

In the event of “Gross Mismanagement” (as that term is defined below) of the Improvements, Agency shall have the authority to require that such Gross Mismanagement cease immediately, and further to require the immediate replacement of the Property Manager if such condition is not

DRAFT
FOR STUDY PUROSES ONLY

corrected after expiration of sixty (60) days from the date of written notice from Agency. For purposes of this Lease, the term "Gross Mismanagement" shall mean management of the Improvements in a manner which violates the terms and/or intention of this Lease to operate a high quality affordable housing complex, and shall include, but is not limited to, the following:

Leasing one or more of the Required Affordable Units to tenants not in conformity with the Prescribed Income Levels;

Allowing the tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding;

Underfunding the prescribed Capital Replacement or Operating Reserves (Sections 10.8 and 10.9) notwithstanding the generation of cash flow adequate to fully fund such Reserves in conformity with this Lease prior to the disbursement of Residual Receipts to Lessee;

Failing to timely maintain the Improvements and the Site in accordance with the Management Plan and the manner prescribed in Section 10;

Failing to submit timely and/or adequate annual Section 33418 reports as required in Section 6.6;

Fraud or embezzlement of Improvements moneys; and

Repeatedly failing to fully cooperate with the San Bernardino Sheriff's Office in maintaining a crime free environment on the Site.

Notwithstanding the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the management company prior to the elapsing of such time period.

4.3 Only Lawful Uses Permitted. Lessee shall not use the Site or the Improvements for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance or unlawful conduct (as now or hereafter defined by any applicable statutory or decisional law) on the Site or the Improvements, or any part thereof.

5. RENT.

5.1 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Agency and that Lessee shall pay all costs, taxes, charges, and expenses of every kind and nature against the Site and the Improvements which may arise or become due during the Term, and which, except for execution hereof, would or could have been payable by Agency.

5.2 Rent. During each Lease Year during the Term, Lessee agrees to pay the "Rent." The term "Rent" shall mean the Base Rent, which is One Dollar (\$1.00) per Lease Year.

5.3 Payment of Rent. All rent that becomes due and payable pursuant to this Lease shall be paid to Agency at the address of Agency listed in Section 26.7 or such other place as Agency may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction.

DRAFT
FOR STUDY PURPOSES ONLY

5.4 Capital Events. The Lessee shall make payments of rent to the Agency. In addition, in the event of (i) a sale, assignment or transfer of the Development or (ii) the refinancing of the Development in an amount greater than the outstanding balance of a loan existing as of the time of such refinancing, the Developer shall pay to Agency, concurrent with such event (“Capital Event”) an amount equal to the lesser of (a) one-half (1/2) of the net proceeds of such sale, assignment, transfer or refinancing, determined by applying those closing costs of unrelated third parties which do not exceed normal and customary costs charged by such unrelated third parties or (b) seventy-five percent (75%) of the net proceeds remaining after repayment of the Primary Construction Loan and the Primary Permanent Loan. Such payments, which shall be due and payable concurrent with each and every Capital Event which occurs during the Term of this Lease, shall constitute “Capital Events Payments.” Any such Capital Events Payments shall reduce the Agency Note.

6. AFFORDABLE HOUSING AND OTHER OCCUPANCY REQUIREMENTS.

6.1 Number of Required Affordable Units and Other Units. Lessee agrees to make available, restrict occupancy to, and rent twenty-one (21) (the “Required Affordable Units”) of the forty-four (44) units to be located on the Site (the “Housing Units”) to be available at an Affordable Rent. No Units shall be restricted on the basis of age. Lessee agrees to make available, restrict occupancy to, and rent all of the Required Affordable Units at Affordable Rent. Subject to minor modification if mutually approved by the parties, there shall be twenty-one (21) Required Affordable Units on the Site; the number of bedrooms for the Required Affordable Units (21 units) is set forth within the definition, Required Affordable Units. The remaining twenty-three units shall consist of: (i) three (3) one-bedroom units; (ii) twelve (12) two-bedroom units; (iii) six (6) three-bedroom units; and four (4) four-bedroom units. The square footages of the respective units shall be as follows: (i) for one-bedroom units, _____ square feet per unit; (ii) for two-bedroom units, _____ square feet per unit; (iii) for three-bedroom units, _____ square feet per unit; and (iv) for four-bedroom units, _____ square feet per unit. An example of the calculation of Affordable Rent for the Required Affordable Units is attached to the DDA as Attachment No. 13 and incorporated herein by reference. In the event the Bond Regulatory Agreement imposes stricter rent requirements, it shall control for so long as it remains in effect. Rental of the Required Affordable Units shall conform to the Prescribed Rent Levels.

In the event the Lessee charges rents for one or more of the Required Affordable Units which exceed Affordable Rent, the Lessee shall promptly, and without necessity of notice or request therefor by the Agency, correct such rent; the cost to rectify such a discrepancy, which may include only refunds to the affected tenants of the overages, shall be initially borne by the Lessee and shall thereafter be allocated sixty percent (60%) to Lessee and forty percent (40%) to the Agency, with such allocation to be spread over one year. The payments to the Agency under this paragraph shall constitute payment of Additional Rent. Any penalties arising from the charging of rents which exceed Affordable Rent shall be paid solely by Lessee.

6.2 Duration of Affordability Requirements. The Housing Units shall be subject to the requirements of this Section 6 for the Term of this Lease. The duration of this requirement shall be known as the “Affordability Period.”

6.3 Selection of Tenants. Lessee shall be responsible for the selection of tenants for the Housing Units in compliance with the criteria set forth in this Section 6 of this Lease. Preference shall be given to tenants who have been displaced by redevelopment activities of Agency in the implementation of the Redevelopment Plan.

DRAFT
FOR STUDY PURPOSES ONLY

6.4 Income of Tenants. Prior to the rental or lease of any Housing Unit to a tenant, and annually thereafter, the Lessee shall submit to Agency or its designee, at Lessee's expense, a completed income computation and certification form, in a form to be provided by Agency. Each tenant shall be a Very Low Income Household or a Lower Income Household which meets the eligibility requirements established for the Housing Unit, and Lessee shall obtain a certification from each tenant leasing an Affordable Unit which substantiates such fact. Lessee shall verify the income certification of the tenant as set forth in Section 403 of the DDA.

In the event a household's income initially complies with the corresponding income restriction (for a Very Low Income Household or a Lower Income Household, whichever is applicable) but the income of such household increases, such increase shall not be deemed to result in a violation by Lessee of the restrictions of this Lease concerning limitations upon income of occupants, provided that: (i) financing by multifamily housing bonds was obtained for the Developer Improvements, and (ii) the resulting income of such household does not exceed one hundred forty percent (140%) of the applicable income limit.

6.5 Determination of Affordable Rent for the Required Affordable Units. Each Required Affordable Unit shall be rented at an "Affordable Rent" to be established as provided herein:

(a) The maximum monthly rental amount for the Required Affordable Units to be rented to Very Low Income Households shall be established at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of San Bernardino County median income for a household of a size appropriate to the Housing Unit; except that where the DDA provides for rent to be based upon thirty percent (30%) of thirty-five (35%) of Median Income or thirty percent (30%) of forty percent (40%) of Median Income, such lesser amounts shall control.

(b) The maximum monthly rental amount for the Required Affordable Units to be rented to Lower Income Households shall be established at one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household of a size appropriate to the Housing Unit.

"Household size appropriate to the unit," for the purpose of the calculation of rent herein (and without regard to actual occupancy), shall mean two persons for each one bedroom unit and three persons for each two bedroom unit. The maximum monthly rental amount of the Housing Units shall be adjusted annually by the formula set forth above upon the promulgation of revised San Bernardino County median income figures by regulation of the California Department of Housing and Community Development. Actual rent charged may be less than such maximum rent.

6.6 Verifications.

(a) **Income Verification.** Lessee shall verify the income of each proposed and existing tenant of the Housing Units.

(b) **Annual Reports.** Following the issuance of the Certificate of Completion, and on or before March 15 of each Lease Year, Lessee shall submit to Agency or its designee the reports required pursuant to Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in the form prescribed by Agency. Each annual report shall cover the immediately preceding Lease Year.

DRAFT
FOR STUDY PUROSES ONLY

In addition, commencing as of March 15, 2007, and continuing on each March 15 thereafter during the Term, the Developer shall submit an Audited Financial Statement for the previous Lease Year (or portion thereof), including all funds from whatever source provided to the Lessee or any Related Entity in connection with the Project. The Audited Financial Statement shall demonstrate ongoing compliance with this Lease, including without limitation Section 5.2.2 hereof.

The Lessee shall maintain on file each tenant's executed lease and Income Verification and rental records for the Project and the Housing Units. The Lessee shall maintain complete and accurate records pertaining to the Very Low Income Units, the Lower Income Units, and any other Units and will permit any duly authorized representative of the Agency to inspect the books and records of the Lessee pertaining to the Project, including those records pertaining to the occupancy of the Very Low Income Units, the Lower Income Units, and any other units. The Lessee shall prepare and submit to the Agency annually commencing March 15, 2007 and continuing throughout the Term, a Certificate of Continuing Program Compliance. Such documentation shall state for each unit in the Project the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determined compliance with the terms of this Lease and the DDA.

As part of its annual report, the Lessee shall include a statement of amounts payable by Lessee under this Lease supported by an Audited Financial Statement (prepared by an independent accounting firm reasonably acceptable to the Agency) which sets forth information in detail sufficient for adequate review by the Agency for the purposes of confirming those amounts payable by the Lessee to the Agency as well as showing the general financial performance of the Project ("Annual Financial Report"). Each Annual Financial Report shall include a profit and loss statement showing Gross Revenues, Operating Expenses, Debt Services, Operating Reserve, Capital Replacement Reserve, Chargeable Fees and Reserves (and all components thereof), and Residual Receipts, all certified by the Audited Financial Statement. In the event the amounts reported or paid deviate by five percent (5%) or more from that amount owing upon review of the Lessee's submittal, Lessee shall reimburse Agency for its cost to review (which may require engagement of auditors) and collect the amounts owing; such amounts shall, until paid, be added to the amount payable under this Lease as Additional Rent.

The Lessee acknowledges that Agency is required by Section 33418 of the California Health and Safety Code to require Lessee to monitor the Housing Units and submit the annual reports required by Section 3 of Article II of the Agency Developer CC&R's. The Agency relies upon the information contained in such reports to satisfy its own reporting requirements pursuant to Sections 33080 and 33080.1 of the California Health and Safety Code. In the event the Lessee fails to submit to the Agency or its designee its Certificate of Continuing Program Compliance for the corresponding Year and Lessee remains in noncompliance for thirty (30) days following receipt of written notice from the Agency of such noncompliance, then Lessee shall, without further notice or opportunity to cure, pay to the Agency Two Hundred Fifty Dollars (\$250.00) (the "Reporting Amount(s)") per each Required Affordable Unit for each year Lessee fails to submit a Certificate of Continuing Program Compliance covering each and every housing unit on the Site.

6.7 Regulatory Agreement. The Lessee shall execute, acknowledge, and deliver to Agency a "Regulatory Agreement," in the form of Attachment No. 6 to the DDA, to be recorded with respect to the Site in the official records of San Bernardino County, California. The Lessee shall comply with the Regulatory Agreement. The Regulatory Agreement is subject to notification (which amendment shall have the same priority as the Regulatory Agreement) to conform to the number of

Units regulated by the Bond Regulatory Agreement if that number is greater than originally provided in the Regulatory Agreement. The Regulatory Agreement and this Lease shall be construed to be consistent to the greatest feasible extent. In the event of any express conflict, this Lease shall control over the Regulatory Agreement.

7. UTILITIES AND TAXES.

7.1 Utilities. Lessee shall pay or cause to be paid all common area charges for gas, electricity, water, sewer, garbage collection, cable television, and other utilities furnished to the Site and the Improvements and all sewer use charges, hookup or similar charges or assessments for utilities levied against the Site and the Improvements for any period included within the Term.

7.2 Real Estate Taxes.

(a) As used herein, the term “real estate taxes” shall mean all real estate taxes, municipal or county water and sewer rates and charges, or any other assessments or taxes, which shall be levied against the Site or the Improvements, or any interest therein, and which become a lien thereon and accrue during the Term.

(b) Any real estate taxes which are payable by Lessee hereunder shall be prorated between Agency and Lessee as of the Commencement Date and then again at the expiration or earlier termination of the Term.

(c) Lessee shall have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Agency, and Lessee may postpone payment of any such contested real estate taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall not operate to prevent the collection of such real estate taxes and the sale of the Site and any Improvements to satisfy any lien arising out of the nonpayment of the same.

(d) Lessee shall have the right to apply for and may obtain any exemption(s) as may be applicable as to real estate taxes.

7.3 Personal Property. Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalty as may be owned by Lessee and from time to time situated within the Site and any Improvements.

7.4 Possessory Interest. Pursuant to Health and Safety Code Section 33673, the Site is required to be assessed and taxed in the same manner as privately owned property. The Lessee shall pay taxes upon the entire property and not merely the assessed value of its leasehold interest. Agency will provide notice to the San Bernardino County Assessor within thirty (30) days of the commencement of this Lease as required by Health and Safety Code Section 33673.1; provided that the failure to do so, by Agency, shall not be deemed to constitute a default by Agency. Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes which may be levied against any and all interests in the Site and any Improvements during the Term, and not merely the assessed value of the leasehold interest in the Site; provided, however, that Lessee may apply for and receive any applicable exemption from the payment of property taxes and assessments. Lessor shall use reasonable efforts to cause the Site to be assessed as a separate parcel.

8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.

8.1 Ownership During Term. All Improvements constructed on the Site by Lessee as provided in the DDA and as permitted by this Lease shall, during the Term, be and remain the property of Lessee; provided, however, that Lessee shall have no right to waste the Improvements, or to destroy, demolish or remove the Improvements except as otherwise permitted pursuant to this Lease; and provided further that Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease. Agency and Lessee covenant for themselves and all persons claiming under or through them that the Improvements are real property.

8.2 Ownership at Termination. Upon termination of this Lease, whether by expiration of the Term or otherwise, all Improvements, fixtures and furnishings shall, without compensation to Lessee, then become Agency's property, free and clear of all liens, encumbrances, and claims to or against them by Lessee or any third person, firm or entity, including but not limited to any mortgagee or lender, unless otherwise approved by Agency in writing at its discretion. At the option of the Agency, the Agency may require the Lessee to demolish and remove any improvements to the Site which have not previously been approved by the Agency.

9. MECHANICS LIENS; FAITHFUL PERFORMANCE.

Lessee shall not suffer or permit any mechanics' or materialmen's liens to be enforced against the fee simple estate in reversion of Agency as to the Site and Improvements, nor against Lessee's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Site and the Improvements, or any part thereof, through or under Lessee, and Lessee agrees to defend, indemnify, and hold Agency and City and their respective officers, officials, employees, agents, and representatives, harmless against such liens. If any such lien shall at any time be filed against the Site or any Improvements, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Agency and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Agency. Lessee shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Agency, express or implied, by inference or otherwise, to any person, firm or limited partnership for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Site, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Site, or any repair or alteration thereto having a cost in excess of \$10,000, Lessee shall give Agency not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws.

10. MAINTENANCE AND REPAIR; CAPITAL REPLACEMENT RESERVE.

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Improvements and the Site throughout the Term without expense to Agency, and to perform all repairs and replacements necessary to maintain and preserve the Improvements and the Site in good repair, in a neat, clean, safe and orderly condition reasonably satisfactory to Agency and in compliance with all applicable laws. Lessee agrees that Agency shall not be required to perform any

DRAFT
FOR STUDY PUROSES ONLY

maintenance, repairs or services or to assume any expense in connection with the Improvements and the Site. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Agency as provided for in Section 1941 and 1942 of the California Civil Code.

The following standards shall be complied with by Lessee and its maintenance staff, contractors or subcontractors:

(1) Lessee shall maintain the Improvements, including individual Affordable Units, all common areas, all interior and exterior facades, and all exterior project site areas, in a safe and sanitary fashion suitable for a high quality, rental housing project. The Lessee agrees to provide utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management for the entire project including interior tenant spaces, common area spaces and exterior common areas. The services provided by the Lessee shall include, but not be limited to, providing all common area electricity, gas, water, television, cable television, property, fire and liability insurance in the amounts set forth in this Lease, all property taxes and personal property taxes, any and all assessments, maintenance and replacement of all exterior landscaping, and all administration and overhead required for the property manager.

(2) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(3) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(4) The Improvements shall be maintained in conformance and in compliance with the approved construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City (and Agency, if such approval is required).

(5) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(6) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons in strict accordance with all governing regulations.

(7) Parking lots, lighting fixtures, trash enclosures, and all areas shall be kept free from any accumulation of debris or waste materials by regularly scheduled maintenance.

(8) Lessee shall, or shall cause the Property Manager to, set aside in an Operating Reserve, which shall be maintained as a separate interest-bearing trust account, in an amount as

DRAFT
FOR STUDY PURPOSES ONLY

prescribed under the Primary Permanent Loan. To the extent this Lease requires that an Operating Reserve be funded at a level in excess of that required under the Primary Permanent Loan, such excess amount shall be funded by Lessee from Residual Receipts. Lessee shall provide, on not less than an annual basis, evidence reasonably satisfactory to Agency Executive Director of compliance herewith, and shall thereafter cause such amount to be retained in the Operating Reserve, to cover shortfalls between Improvements income and actual project operating expenses. The Operating Reserve shall be replenished to the full amount prior to any further disbursement of Residual Receipts to the Lessee. Any moneys in such Operating Reserve which are not expended as of the termination of this Lease shall be treated as Residual Receipts.

(9) Lessee shall also, or cause the Property Manager or permanent lender to, commencing as of the first month following the first anniversary of the completion of the first Housing Unit (as such completion is evidenced by the issuance of a certificate of occupancy by the City as to the corresponding building) set aside the Capital Replacement Reserve. The Capital Replacement Reserve shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Improvements' fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Project become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, that Lessee may first use other funds for payment with the prior consent of Agency Executive Director, which approval shall not be unreasonably withheld. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Lessee of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site in the manner prescribed in this Section 10 and the DDA. Lessee, at its expense, shall submit to Agency on not less than an annual basis an accounting for the Capital Replacement Reserve. Any amounts of the Capital Replacement Reserve in excess of the level of such reserve required by the Primary Permanent Lender shall be funded from Residual Receipts. Any moneys in the Capital Replacement Reserve which are not expended as of the termination of this Lease shall be treated as Residual Receipts.

Capital repairs to and replacement of the Improvements shall include only those items with a long useful life, including without limitation the following:

- (a) Appliance replacement;
- (b) Hot water heater replacement;
- (c) Plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets;
- (d) Air conditioning and heating replacement;
- (e) Asphalt replacement;
- (f) Roofing replacement;
- (g) Landscape tree replacement and irrigation pipe and controls replacement;
- (h) Gas line pipe replacement;
- (i) Lighting fixture replacement; and

- (j) Miscellaneous motors and blowers.

11. ENVIRONMENTAL MATTERS.

11.1 Definitions. For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(a) The term “Hazardous Materials” shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of San Bernardino, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

(b) The term “Hazardous Materials Contamination” shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Site.

(c) The term “Governmental Requirements” shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Agency, Lessee or the Site.

11.2 Site Evaluation. Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.3 of this Lease) for all Hazardous Materials Contamination of the Site which occurs during the Term of this Lease or extension thereof.

11.3 Indemnification; Lessee’s Indemnity. Lessee shall save, protect, defend, indemnify and hold harmless Agency and its officers, officials, employees, and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation,

DRAFT
FOR STUDY PURPOSES ONLY

consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by Agency and its officers, officials, employees, or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination. Lessee's obligations under this Section 11.3.1 shall survive the expiration of this Lease and shall not merge with any grant deed.

11.4 Duty to Prevent Hazardous Material Contamination. Lessee shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in San Bernardino County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

11.5 Obligation of Lessee to Remediate Premises. Notwithstanding the obligation of Lessee to indemnify Agency pursuant to Section 11.3 of this Lease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Site for the purposes contemplated by this Lease and the DDA, which requirements or necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Site to an environmentally sound condition for the uses contemplated by this Lease and the DDA notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements.

11.6 Storage or Handling of Hazardous Materials. Lessee, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Site. In the event Lessee does store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Agency in writing at least ten (10) days prior to their first appearance on the Site and Lessee's failure to do so shall constitute a material default under this Lease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Agency in its reasonable judgment, Agency may require Lessee, at Lessee's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Site. Lessee's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Site, shall be satisfactory to Agency, in Agency's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Agency, for all costs and expenses incurred by Agency arising out of or connected with the removal, clean-up and/or restoration work and

DRAFT
FOR STUDY PUROSES ONLY

materials necessary to return the Site and any property adjacent to the Site affected by Hazardous Materials emanating from the Site to their condition existing at the time of the Lessee's Site Evaluation. Lessee's obligations hereunder shall survive the termination of this Lease and shall not merge with any grant deed.

11.7 Environmental Inquiries. Lessee shall notify Agency, and provide to Agency a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site: notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Lessee shall report to Agency, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after the release, furnish to Agency a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Agency, Lessee shall furnish to Agency a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

12. ALTERATION OF IMPROVEMENTS.

Upon completion of the Improvements, Lessee shall not make or permit to be made any material structural alteration of, addition to or change in the Improvements (which shall be deemed to be material if the cost or value of such alteration(s) or addition(s) exceeds \$10,000.00 as to any item or \$25,000.00 as all such items are aggregated), nor demolish all or any part of the Improvements without the prior written consent of Agency; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Improvements by Lessee in accordance with Section 10 hereof. In requesting such consent Lessee shall submit to Agency detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor.

This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Improvements and the Site in a clean and safe condition, including structural repair and restoration of damaged Improvements. Agency shall not be obligated by this Lease to make any improvements to the Site or to assume any expense therefor.

Lessee shall not commit or suffer to be committed any waste or impairment of the Site or the Improvements, or any part thereof, except as otherwise permitted pursuant to this Lease. Lessee agrees to keep the Site and the Improvements clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to Agency.

13. DAMAGE OR DESTRUCTION.

13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 13.3 below, if the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Lessee, Lessee shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently

DRAFT
FOR STUDY PUROSES ONLY

commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be maintained in pursuant to this Lease, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Lessee shall complete the same as soon as possible thereafter so that the Improvements can continue to be operated and occupied as an affordable housing project in accordance with the Lease. Subject to Section 26.23, in no event shall the repair, replacement, or restoration period exceed fourteen (14) months from the date Lessee obtains insurance proceeds unless Agency Executive Director, in his or her sole and absolute discretion, approves a longer period of time. Agency shall cooperate with Lessee, at no expense to Agency, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Lessee may elect not to repair, replace, or restore the Improvements by giving notice to Agency (in which event Lessee will be entitled to all insurance proceeds but Lessee shall be required to remove all debris from the Site) or Lessee may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City, Agency, and the other governmental agency or agencies with jurisdiction. In the event Lessee elects not to repair, replace, or restore and give Agency notice of such election as provided herein, this Lease shall terminate.

13.2 Continued Operations. During any period of repair, Lessee shall continue, or cause the continuation of, the operation of the Improvements on the Site to the extent reasonably practicable from the standpoint of prudent business management.

13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the Improvements are completely destroyed or substantially damaged by a casualty for which Lessee is not required to (and has not) insured against, then Lessee shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Agency with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Lessee shall remove all debris from the Site. As used in this Section 13.3, “substantial damage” caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is twenty-five percent (25%) or more of the replacement cost of the improvements comprising the Improvements. In the event Lessee does not timely elect not to repair, replace, or restore the Improvements as set forth in the first sentence of this Section 13.3, Lessee shall be conclusively deemed to have waived its right not to repair, replace, or restore the Improvements and thereafter Lessee shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Improvements in accordance with Section 13.1 above and continue operation of the Improvements during the period of repair (if practicable) in accordance with Section 13.2 above. In the event Lessee elects not to repair, replace, or restore, and gives Agency notice of such election as provided herein, this Lease shall terminate.

14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.

Except for (a) leases of particular dwelling units to tenants, and (b) the lease of or grant of an easement or license to the City, Lessee shall not sell, assign, sublease, or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease, or transfer in any other mode or form of the whole or any part of the Site or the Improvements (each of which events is referred to in this Lease as an “Assignment”), without prior written approval of Agency. [The term “Assignment” shall be deemed to include (without limitation) all refinancing thereof and any other loans approved by Agency. Any purported assignment without the prior written consent of Agency

DRAFT
FOR STUDY PUROSES ONLY

shall be made null and void and shall confer no rights whatsoever upon any purported assignee or transferee.]

Notwithstanding any other provision of this Lease to the contrary, the Agency shall not unreasonably withhold its approval of an assignment of this Lease or conveyance of the Site or Improvements, or any part thereof, in connection with any of the following:

(a) Any transfers to an entity or entities in which Lessee retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.

In the event of a proposed assignment by Lessee under subparagraphs (a) through (b), inclusive, above, Lessee agrees that at least thirty (30) days prior to such assignment it shall give written notice to Agency including a request for approval of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Lease, subject to the provisions of the following paragraph.

Agency agrees that it will consider in good faith a request for Agency's consent to a transfer made pursuant to this Section 14 after the achievement of occupancy of ninety percent (90%) or more of the Housing Units in conformity with this Lease following the issuance by Agency of a Certificate of Completion for the last building to be constructed as part of the Improvements, provided Lessee delivers written notice to Agency requesting such approval and provided further that the Bond Regulatory Agreement and the Agency Developer CC&R's remain in full force and effect (unless the same have been extinguished or terminated by operation of such documents or under another document as may be hereafter executed by Agency). Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, and the financial terms of such Assignment (including the consideration proposed to flow to the Developer or a Related Entity and/or the Principals) in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 14, and as reasonably determined by Agency. Notwithstanding the foregoing, the transfer of limited partnership interests to tax credit investors shall not entitle the Agency to receive compensation (by virtue of such transfer to tax credit investors). Agency shall evaluate such proposed transferee or assignee on the basis of its development qualifications and experience and/or qualifications and experience in the operation of facilities similar to the Improvements, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, which Agency reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be required for all proposed assignments. The Lessee agrees and acknowledges that in connection with any such assignment approved by the Agency pursuant to this Lease, the Lessee and the Guarantor shall remain liable for performance pursuant to this Lease for a period of five (5) years following such assignment; provided that the five-year limitation shall not apply (and the ongoing liability of Developer and Guarantor shall not be thereby limited) in connection with the transfer of limited partnership interests to tax credit investors. Within thirty (30) days after the receipt of the Lessee's written notice requesting approval of an assignment or transfer pursuant to this Section 14, Agency shall either approve or disapprove such

DRAFT
FOR STUDY PUROSES ONLY

proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Lessee shall promptly furnish to Agency such further information as may be reasonably requested.

Notwithstanding any provision in this Section 14 to the contrary, in no event shall Lessee make any assignment which would or could be effective beyond the Term without the prior consent of the Agency.

15. ANCILLARY DUTIES.

The Agency and the Lessee intend that this Lease be a so called “triple net” lease, and that except as expressly provided herein all costs, expenses and obligations with respect to the Site during the Lease Term be borne by the Lessee and not by the Agency. Unless this Lease provides otherwise, all Ancillary Duties shall be satisfied and/or paid with the next applicable payment of Rent. Ancillary Duties shall include, without limitation: (i) the payment of all taxes and assessments, including without limitation those taxes (whether characterized as possessory interest taxes or otherwise) described in Section 7.4 of this Lease, which become due and owing during the Term (provided that Lessee shall not hereby be precluded from applying for or obtaining any applicable exemption from property tax); (ii) an amount equal to one hundred fifteen percent (115%) of the amounts paid by Agency for insurance premiums or costs to repair and maintain the Development upon the failure by Lessee to timely and fully provide such insurance and maintenance; (iii) Reporting Amount(s) (as described in Section 6.6 hereof); and (iv) in the event an Audited Financial Statement shows an underpayment to the Agency of five percent (5%) or greater of the amount paid to the Agency for the corresponding Lease Year, the Developer shall pay to the Agency: (a) the Agency’s costs (including accountant and consultant fees, attorneys’ fees, and a reasonable estimation of the cost of staff time) incurred in connection with the Agency’s audit of Lessee under Section 26.5 of this Lease, and (b) an amount equal to twenty-five percent (25%) of the shortfall as a penalty which shall not be deemed to constitute an Operating Expense for the purposes of this Lease; and (iv) the Reporting Amount(s), which Reporting Amount(s) shall not be deemed to constitute an Operating Expense for the purposes of this Lease.

16. INDEMNITY.

During the Term, Lessee agrees that Agency and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Site and the Improvements, or in connection with the operation thereof, or from any defect in the Site or the Improvements, or from any displacement of tenants or liability for relocation assistance pursuant to Government Code Section 7260, et seq., due to the acts of Lessee hereunder. Lessee agrees to indemnify and save free and harmless Agency and City and their authorized agents, officers, representatives and employees against any and all claims, actions, damages, liability (including reasonable expenses and attorneys’ fees) concerning loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Site and/or the Improvements or the occupancy or use by Lessee of the Site and/or the Improvements or any part thereof, or arising from or out of Lessee’s failure to comply with any provision of this Lease or otherwise occasioned wholly or in part by any act or omission of Lessee,

its agents, representatives, contractors, employees, servants, customers or licensees. Lessee shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Agency, City, or their respective agents, officers, representatives or employees.

17. INSURANCE.

17.1 Insurance to be Provided by Lessee. During the Term, Lessee, at its sole cost and expense, shall:

(a) Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Improvements of all property of an insurable nature located upon the Site, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance and casualty loss policies.

(b) Maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils of fire, lighting, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than twelve (12) months' gross rental income payable to Lessee from tenants on the Site, assuming one hundred percent (100%) occupancy.

(c) Maintain or cause to be maintained, comprehensive general liability insurance with respect to the Site and the Improvements and the operations of the Lessee in, on or about the Site and the Improvements, including, but not limited to, owned and hired motor vehicle liability, cross liability and severability of interests, personal injury, XC&U, blanket contractual, owners protective broad form property damage, and product/completed operations liability coverage in an amount not less than Two Million Dollars (\$2,000,000), combined single limit, public liability insurance to protect against loss from liability for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Site and the Improvements, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Site and the Improvements, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Lessee of its sublessees, or any person acting for Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect against incurring any legal cost in defending claims for alleged loss. The required amount of insurance shall be subject to increases as Agency may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Loma Linda area. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible.

(d) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California,

DRAFT
FOR STUDY PUROSES ONLY

or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Site and the Improvements and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Site or the Improvements or the operation thereof by Lessee.

17.2 Definition of "Full Insurable Value". The term "Full Insurable Value" as used in this Section 17 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Improvements, including the cost of construction of the Improvements, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the Full Insurable Value to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by an appraiser mutually acceptable to Agency and Lessee, not less often than once every three (3) years.

17.3 General Insurance Provisions. All policies of insurance provided for in this Section 17, except for the workers' compensation insurance, shall name Lessee as the insured and loss payee and Agency and the City and their respective officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee's Mortgagee, and may provide that any loss is payable to Lessee's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Agency on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All policies of insurance required of Lessee herein shall be issued by insurance companies with a general policy holder's rating of not less than A and a financial rating of not less than Class X, as rated in the most current available "Best's Key Rating Guide", and which are qualified to do business in the State of California. All policies or certificates of insurance shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to Agency; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by Agency and shall contain a waiver of subrogation for the benefit of the City and Agency.

Coverage provided hereunder by Lessee shall be primary insurance and not be contributing with any insurance maintained by Agency or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and Agency. None of the above-described policies shall require Developer to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless first approved in writing by the Agency Executive Director. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A or better in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." The required certificate shall be furnished by Lessee at the time set forth herein.

17.4 Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Agency shall have the right, at Agency's election, and upon ten

(10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Agency shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

17.5 Insurance Proceeds Resulting from Loss or Damage to Improvements. All proceeds of insurance with respect to loss or damage to the Improvements during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Improvements in accordance with plans and specifications approved in writing by Agency. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be retained by the party that purchased the insurance. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Improvements, such proceeds shall be payable in accordance with Section 17.3 of this Lease.

In the event this Lease is terminated by mutual agreement of Agency and Lessee and said Improvements are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by Agency and Lessee and shall be applied first to any payments due under this Lease from Lessee to Agency, second to restore the Site and Improvements to their original condition and to a neat and clean condition, and finally any excess shall be apportioned between Lessee and Agency as their interests may appear; provided, however, that within any period when there is an outstanding mortgage upon the Improvements, such proceeds shall be applied first to discharge the debt secured by the mortgage and then for the purposes and in the order set forth above in this paragraph. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

18. EMINENT DOMAIN.

In the event that the Site and/or the Improvements or any part thereof shall be taken for public purposes by any public agency other than the Agency by condemnation as a result of any action or proceeding in eminent domain, then, as between Agency and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Agency and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(a) In the event of such taking of only a part of the Site, leaving the remainder of the Site in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Site so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Site not so taken and from and after such date the rental required by this Lease to be paid by Lessee to Agency shall be reduced in the proportion which the number of square feet so taken bears to the total number of square feet in the Site.

(b) In the event of taking of only a part of the Site, leaving the remainder of the Site in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Site or the portion thereof so taken vests in the condemning authority.

DRAFT
FOR STUDY PURPOSES ONLY

(c) In the event the entire Site is taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Site so taken vests in the condemning authority.

(d) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Improvements, to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Site was leased.

(e) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Site or portion thereof taken, valued as subject to this Lease, shall belong to Agency. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Site pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Improvements or portion thereof taken shall belong to Agency and Lessee, as their interests may appear, except that in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Improvements, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Improvements to the extent necessary to restore or repair the Improvements and any remaining severance damages shall be payable to Agency. Said award shall be used for the restoration, repair or rebuilding of the Improvements in accordance with plans and specifications approved in writing by Agency to the extent necessary to restore or repair the Improvements and any remaining severance damages shall be payable to Lessee; except that, during the last ten (10) years of the Term, any remaining severance damages shall be payable to Agency. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(f) Provided, however, that within the period during which there is an outstanding mortgage on the Improvements, the mortgagee shall be entitled to any portion of the award attributable to the Improvements, to the extent of its interest therein. Any excess portion of the award attributable to the condemnation of the Improvements shall be payable to Agency.

(g) Notwithstanding the foregoing provisions of this Section, Agency may, in its discretion and without affecting the validity and existence of this Lease, transfer Agency's interests in the Site in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Agency, Lessee (or mortgagee if a mortgage is then in effect) and Agency shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Improvements taken by the authority.

(h) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Agency and Lessee.

(i) The Agency agrees that during the Term, provided that this Lease shall remain in effect, the Agency shall not exercise eminent domain powers as to the Site or the Improvements.

19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.

There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Site and the Improvements, and

DRAFT
FOR STUDY PURPOSES ONLY

Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages and accommodation.

Lessee shall refrain from restricting the rental, sale, or lease of the Site and the Improvements, or any portion thereof, on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In Leases:

“The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(b) In Contracts:

“There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

20. NONDISCRIMINATION IN EMPLOYMENT.

Lessee, for itself and its successors and assigns, agrees that during the operation of the Improvements provided for in this Lease, and during any work of repair or replacement, Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin, or on the basis of any other category or status not permitted by law.

21. [INTENTIONALLY OMITTED].

22. COMPLIANCE WITH LAW.

Lessee agrees, at its sole cost and expense, to comply and secure compliance by all contractors and tenants of the Site and Improvements with all the requirements now in force, or

DRAFT
FOR STUDY PUROSES ONLY

which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Site and the Improvements, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors and tenants of the Site and Improvements with, in the use of the Site and the Improvements all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Site or the Improvements, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Site and the Improvements. Lessee shall use good faith efforts to prevent tenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by tenants of the Site and Improvements. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the Site or the Improvements shall be conclusive of that fact as between Agency and Lessee, or such sublessee or permittee. Lessee shall comply with all applicable laws, regulations, and any applicable labor standards, all of which laws and regulations shall be deemed to be incorporated herein by reference. Lessee shall comply with the Tax Credit Rules. The Lease shall further comply with the Bond Rules and the Bond Regulatory Agreement.

23. ENTRY AND INSPECTION.

In addition to and without limitation to such rights as the Agency or City may have as a matter of law, the Agency reserves and shall have the right between the hours of 8:00 a.m. and 8:00 p.m., upon twenty-four (24) hours prior notice (except in cases of emergency in which case entry may be made at any time and without notice) to Lessee by the Agency Executive Director, to enter the Site and the Improvements for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Site and the Improvements or to inspect the operations conducted thereon.

24. RIGHT TO MAINTAIN.

In the event that the entry or inspection by Agency pursuant to Section 23 hereof discloses that the Site or the Improvements are not in a decent, safe, and sanitary condition, Agency shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Agency in having such necessary maintenance work done in order to keep the Site and the Improvements in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations on Agency or increase obligations elsewhere in this Lease imposed on Agency.

25. EVENTS OF DEFAULT AND REMEDIES.

25.1 Events of Default by Lessee. The occurrence of any one (1) or more of the following shall constitute an event of default hereunder:

(a) Lessee shall fail to construct the Improvements in accordance with the DDA and within the times set forth in the DDA; or

DRAFT
FOR STUDY PUROSES ONLY

- (b) Lessee shall abandon or surrender the Site, or the Improvements; or
- (c) Lessee shall fail or refuse to pay, within ten (10) days of notice from Agency that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or
- (d) Lessee shall fail to pay when due any Capital Events Payment(s); or
- (e) Lessee shall fail to perform any covenant or condition of this Lease other than as set forth in subparagraphs (a) or (b) above or paragraphs (f), (i) or (j) below, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Agency specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, then Lessee shall not be deemed to be in default if Lessee shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or
- (f) Subject to any restrictions or limitations placed on Agency by applicable laws governing bankruptcy, Lessee's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within ninety (90) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for sixty (60) consecutive days any attachment, levy, execution or seizure of all or a portion of Lessee's assets or of Lessee's interest in this Lease; or
- (g) Lessee shall charge or accept rent that is in excess of Affordable Rent; or
- (h) Lessee shall charge or accept rent that is in excess of the Prescribed Rent Levels; or
- (i) Lessee shall rent to a tenant, or allow occupancy by a person or household, that is not a Very Low Income Household or a Lower Income Household; or
- (j) Lessee shall fail to pay when due any amounts required by the Agency Note (without regard to the priority of the deed of trust in respect to the Agency Note); or
- (k) The Lessee or the Developer (under the DDA) shall fail to pay when due any amounts required under the DDA;

then, upon notice having been given by Agency and the failure to cure within thirty (30) of such notice, such event shall constitute an event of default under this Lease.

25.2 Remedies of Agency.

In the event of any such default as described in Section 25.1 which default has not been timely cured, Agency may, at its option:

DRAFT
FOR STUDY PUROSES ONLY

- (1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Agency in enforcing this provision) to the account of Lessee, which charge shall be due and payable within thirty (30) days after presentation by Agency of a statement of all or part of said costs;
- (2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Agency in enforcing this provision) from the proceeds of any insurance;
- (3) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;
- (4) Have a receiver appointed to take possession of Lessee's interest in the Site and the Improvements, with power in said receiver to administer Lessee's interest in the Site and the Improvements, to collect all funds available to Lessee in connection with its operation and maintenance of the Site and the Improvements; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;
- (5) Maintain and operate the Site and the Improvements, without terminating this Lease;
- (6) Terminate this Lease by written notice to Lessee of its intention to do so; or
- (7) Exercise its rights under the Agency Note.

25.3 Right of Agency in the Event of Termination of Lease. Upon termination of this Lease pursuant to Section 25.2 or Section 15, it shall be lawful for Agency to re-enter and repossess the Site and the Improvements and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Site and the Improvements peaceably to Agency immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all the Improvements on the Site shall vest in Agency pursuant to Section 8.2.

Even though Lessee has breached the Lease and abandoned the Site, this Lease shall continue in effect for so long as Agency does not terminate Lessee's right to possession, and Agency may enforce all of its right and remedies under this Lease, including, but not limited to, the right to recover the rent as it becomes due under this Lease. No ejectment, re-entry or other act by or on behalf of Agency shall constitute a termination unless Agency gives Lessee notice of termination in writing.

Termination of this Lease shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Lessee from the obligation to pay any sum due to Agency or from any claim for damages against Lessee.

25.4 Damages. Should Agency elect to terminate this Lease pursuant to the provisions of this Section 25, Agency may recover from Lessee, as damages, the following: (a) The worth at the time of the award of any unpaid rent which had been earned at the time of the termination, plus (b) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of rent loss Lessee proves

DRAFT
FOR STUDY PUROSES ONLY

could have been reasonably avoided, plus (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rent loss that Lessee proves could be reasonably avoided, plus (d) any other amounts necessary to compensate Agency for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to, any costs or expenses incurred by Agency in (i) retaking possession of the Site and the Improvements, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Site and the Improvements after default, (iii) preparing the Site and the Improvements for reletting to a new tenant, including repairs or alterations to the Site and the Improvements, (iv) leasing commissions, or (v) any other costs necessary or appropriate to relet the Site and the Improvements, plus (e) at Agency's election, any other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the law of the State of California.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the maximum lawful rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Site at the time of the award plus one percent (1%).

25.5 Rights and Remedies are Cumulative. The remedies provided by this Section 25 are not exclusive and shall be cumulative to all other rights and remedies possessed by Agency. The exercise by Agency of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

26. MISCELLANEOUS.

26.1 Governing Law; Interpretation. The laws of the State of California shall govern the interpretation and enforcement of this Lease.

This Lease shall be reasonably interpreted in light of its purposes to provide affordable housing and to afford the Agency those rents and other revenues as are provided for herein.

This Lease shall be interpreted as if jointly prepared by both parties.

This Lease shall be construed as consistent with the DDA and the Regulatory Agreement to the greatest extent feasible.

26.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Bernardino County, State of California, in any other appropriate court in that County, or in the Federal District Court in the District of California in which the Site is located.

26.3 Acceptance of Service of Process. In the event that any legal action is commenced by Lessee against Agency, service of process on Agency shall be made by personal service upon the Chairman of the Agency or the Agency Executive Director, or in such other manner as may be provided by law.

DRAFT
FOR STUDY PURPOSES ONLY

In the event that any legal action is commenced by Agency against Lessee, service of process on Lessee shall be made by personal service upon Lessee or in such other manner as may be provided by law, and shall be effective whether made within or without the State of California.

26.4 Attorneys' Fees And Court Costs. In the event that either Agency or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor in addition to whatever other relief such prevailing party may be entitled.

26.5 Financial Statement; Inspection of Books And Records. Lessee shall submit to the Agency on an annual basis, not later than seventy-five (75) days after the last day of each Lease Year, an Audited Financial Statement for the operation of the Site and Improvements, which is prepared by a certified public accounting firm, including without limitation the information described in Section 6.6 hereof. In addition, Agency shall have the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Site as pertinent to the purposes of this Lease and the DDA. Lessee also has the right (at Agency's office, upon not less than forty-eight (48) hours' notice, and at all reasonable times) to inspect the books and records of Agency pertaining to the Site as pertinent to the purposes of this Lease and the DDA.

26.6 Interest. Any amount due Agency that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of (i) seven percent (7%) per annum, compounded annually, on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

26.7 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

Agency:	Loma Linda Redevelopment Agency 25541 Barton Road Loma Linda, California 92354 Attention: Executive Director
with a copy to: (delivery of which copy shall not constitute notice to Agency)	Stradling Yocca Carlson & Rauth Attention: Mark J. Huebsch 660 Newport Center Drive, Suite 1600 Newport Beach, California 92660
Lessee:	10777 Poplar St., L.P. 15303 Venture Blvd., Suite 1100 Sherman Oaks, California 91403 Attention: Charles Brumbaugh

with a copy to: _____ [to come]
(delivery of which
copy shall not
constitute notice
to Lessee)

or to such other address as either party shall later designate for such purposes by written notice to the other party. Notices shall be deemed effective upon receipt provided that the party to whom notice is being given has notified the other party of its current address, and otherwise upon the earlier of personal receipt or within seven (7) days after delivery thereof to the address(es) as provided above; provided, however that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice to the delivering party shall be effective on the third day after the attempted delivery or deposit in the United States mail.

26.8 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Lease.

26.9 Non-Merger of Fee And Leasehold Estates. If both Agency's and Lessee's estates in the Site or the Improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Agency and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Agency, terminate all or any existing sublease or subtenancies or may, at the option of Agency, operate as an assignment to Agency of any or all such existing subleases or subtenancies.

26.10 Holding Over. The occupancy of the Site after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

26.11 Conflict of Interest. No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

26.12 Non-Liability of Agency Officials And Employees. No member, official, officer, employee, agent, or representative of Agency shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

26.13 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

26.14 Transactions with Affiliates. Lessee shall not have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space,

DRAFT
FOR STUDY PUROSES ONLY

providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Site and the Improvements, without the prior written approval of the Agency, which approval shall be given only if the Agency reasonably concludes that all such costs, charges and rents are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

The Agency acknowledges that Lessee is entering into or has entered into a property management agreement with Brackenhoff Management Group, Inc., in a form dated as of ____ 1, 2006, a copy of which is on file with the Agency (the "Designated Management Agreement"), on terms and conditions which have been reviewed by Agency, and Agency hereby expressly approves and consents to Lessee entering into the Designated Management Agreement. The approval of the Designated Management Agreement shall not amend or modify any provision of this Lease.

26.15 Waivers And Amendments. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Agency or Lessee. The waiver by Agency of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Agency shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Agency's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Agency to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Agency from enforcing any provision hereof.

All amendments or modifications hereto must be in writing and signed by the appropriate authorities of Agency and Lessee.

The Lessee's mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's mortgagee giving its prior written consent.

26.16 Non-Merger With DDA. None of the terms, covenants or conditions agreed upon in writing in the DDA and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Agency in respect to the Site or any part thereof, shall be deemed to be merged with this Lease.

26.17 Entire Agreement; Duplicate Originals; Counterparts. Except as set forth in Section 26.16, this Lease sets forth the entire understanding of the parties with respect to Lessee's ground lease of the Site. This Lease is executed in three (3) duplicate originals and counterparts, each of which is deemed to be an original. This Lease includes thirty-nine (39) pages and five exhibits, Exhibits A, B, C, D and E. The Exhibits are incorporated by reference herein.

26.18 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

26.19 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the

DRAFT
FOR STUDY PUROSES ONLY

provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the DDA.

26.20 Recordation. A short form memorandum of this Lease, in the form attached hereto as Exhibit “C”, shall be recorded at or within one (1) day after the time the Lease is executed. The failure to record such Memorandum shall not affect this Lease.

26.21 Binding Effect. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

26.22 Estoppel Certificate. Each of the parties shall at any time and from time to time, but not more frequently than twice during any calendar year, upon not less than twenty (20) days’ prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid (which may be based upon the best knowledge of the party providing the certificate), and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Agency or any successor in interest to Agency or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Agency may be relied upon by any prospective assignee of Lessee’s interest in this Lease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

26.23 Force Majeure. The time within which Agency or Lessee is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

26.24 Quiet Enjoyment. Agency does hereby covenant, promise and agree to and with Lessee that Lessee, for so long as Lessee is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Site throughout the Term.

26.25 Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Agency Executive Director or his or her designee is authorized to act on behalf of Agency unless specifically provided otherwise or the law otherwise requires.

26.26 No Third Parties Benefited Except for City and Approved Leasehold Mortgagee. This Lease is made for the purpose of setting forth rights and obligations of Lessee and Agency, and no other person (except for the City) shall have any rights hereunder or by reason hereof. Except for the City, and each leasehold mortgagee approved by Agency, each of which shall be deemed to be a third party beneficiary of this Lease, there shall be no third party beneficiaries of this Lease.

DRAFT
FOR STUDY PUROSES ONLY

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

AGENCY:

LOMA LINDA REDEVELOPMENT AGENCY, a
public body corporate and politic

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

Pamela Byrnes-O'Camb, Agency Secretary

LESSEE:

10777 POPLAR ST., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

DRAFT

FOR STUDY PUROSES ONLY

EXHIBIT A TO ATTACHMENT NO. 6

SITE MAP

[To Come]

DRAFT

FOR STUDY PUROSES ONLY

EXHIBIT B TO ATTACHMENT NO. 6

SITE LEGAL DESCRIPTION

[To Come]

EXHIBIT C TO ATTACHMENT NO. 6

MEMORANDUM OF LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Loma Linda Redevelopment Agency
16600 Civic Center Drive
Loma Linda, CA 90706
Attention: Executive Director

Exempt from Recording Fee Pursuant to Government
Code Section 27383.

APN: _____

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is hereby made as of _____ by and between the **LOMA LINDA REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), and **10777 POPLAR ST., L.P.**, a California limited partnership (the "Lessee").

RECITALS

A. Agency and the Lessee have entered into a ground lease dated as of _____, 2002, for that certain parcel of real property (the "Property") which is legally described in Addendum "A" attached hereto and incorporated herein by reference (the ground lease, as amended is hereafter referred to as the "Lease"). A copy of the Lease is available for public inspection at Agency's office at 25541 Barton Road, Loma Linda, California. The term of the Lease is sixty (60) years.

B. The Lease provides that a short form memorandum of the Lease shall be executed and recorded in the Official Records of San Bernardino County, California.

C. The Lease includes restrictions which limit the rents chargeable, the incomes of renters, as more fully set forth in the Lease.

D. The Lease provides that Lessee shall pay taxes upon the assessed value of the entire Property, and not merely a leasehold interest, as provided pursuant to Section 33673 of the California Health and Safety Code.

DRAFT
FOR STUDY PUROSES ONLY

NOW, THEREFORE, the parties hereto certify as follows:

Agency, pursuant to the Lease, has leased the Property to the Lessee upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Lease, and shall not be used to interpret the provisions of the Lease.

LOMA LINDA REDEVELOPMENT AGENCY, a
public body corporate and politic

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

Pamela Byrnes-O'Camb, Agency Secretary

10777 POPLAR ST., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation
its General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

DRAFT
FOR STUDY PUROSES ONLY

ADDENDUM “A”
LEGAL DESCRIPTION
[TO COME]

DRAFT

FOR STUDY PUROSES ONLY

EXHIBIT D TO ATTACHMENT NO. 6

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

[To Be Inserted; Same as Attachment No. 4 to DDA)

EXHIBIT "E" TO ATTACHMENT NO. 6

GROUND LEASE RIDER

THIS GROUND LEASE RIDER (the "Rider") is attached to and forms a part of that certain Ground Lease (the "Lease") by and between the Loma Linda Redevelopment Agency, as lessor (the "Landlord") and 10777 Poplar St., L.P., a California limited partnership, as lessee (the "Tenant"). All capitalized terms used herein and not otherwise defined shall have the meanings given that term in the Lease.

1. TENANT'S RIGHT TO MORTGAGE:

1.1 Tenant shall have the right, with Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, to mortgage the Lease and Tenant's leasehold interest by one or more deeds of trust (each, a "Leasehold Mortgage"). No foreclosure (or deed or other transfer in lieu of foreclosure) under any Leasehold Mortgage shall require the consent of the Landlord under, or constitute a breach or default under, the Lease.

1.2 If Tenant shall mortgage the Lease and Tenant's leasehold estate hereunder, then Tenant or the holder (each, a "Leasehold Mortgagee") of such mortgage shall forward to Landlord:

(a) an executed counterpart of the mortgage or mortgages, in form proper for recording, or, at Tenant's option, a true copy of such mortgage or mortgages; and

(b) a written notice setting forth the name and address of the holder of such mortgage.

In the event of any assignment of the mortgage or mortgages held by a Leasehold Mortgagee, or change in its name and/or address, the assignee of the Leasehold Mortgagee shall give written notice thereof to Landlord, changing the name of the Leasehold Mortgagee and/or the address to which copies of notices are to be sent.

1.3 Until the time, if any, that each Leasehold Mortgage shall be satisfied of record, or each Leasehold Mortgagee shall give to Landlord written notice that the Leasehold Mortgage held by it has been satisfied:

a. no surrender or acceptance of the Demised Premises, or cancellation, amendment or modification of the Lease, shall be binding upon any Leasehold Mortgagee, or affect any Leasehold Mortgage, if the same is effectuated without the prior written consent of such Leasehold Mortgagee;

b. if Landlord shall give any notice of default and/or termination to Tenant under the Lease, Landlord shall, at the same time and in the same manner, give a copy of such notice to each Leasehold Mortgagee at the respective address theretofore designated by each of them; and

c. no notice of default and/or termination given by Landlord to Tenant shall be binding upon, or affect, any Leasehold Mortgagee, unless a copy of such notice shall be given to such Leasehold Mortgagee.

DRAFT
FOR STUDY PUROSES ONLY

1.4 Each Leasehold Mortgagee shall be afforded the right, but not the obligation, to perform any term, covenant, or condition of the Lease to be performed by Tenant, as well as to remedy any default by Tenant hereunder, and Landlord shall accept such performance by any Leasehold Mortgagee with the same force and effect as if furnished by Tenant, provided, however, that the Leasehold Mortgagee shall not thereby or hereby be subrogated to the rights of Landlord. Additionally, Tenant may delegate irrevocably to any Leasehold Mortgagee(s) the authority to exercise any or all of Tenant's rights hereunder, including, but not limited to the right of the Leasehold Mortgagee to participate (in conjunction with or to the exclusion of Tenant) in any proceeding, arbitration or settlement involving condemnation or eminent domain affecting Tenant's leasehold interest in the Demised Premises, but no such delegation shall be binding upon Landlord unless and until either Tenant or the Leasehold Mortgagee in question shall give to Landlord a true copy of a written instrument effecting such delegation, in form required for recording. Such delegation of authority may be effected by the terms of a Leasehold Mortgage itself, in which event the service upon Landlord of an executed counterpart or certified copy of the Leasehold Mortgage in accordance with Section 2, together with a written notice specifying the provisions therein that delegate such authority to such Leasehold Mortgagee, shall be sufficient to give Landlord notice of such delegation. Any provision of the Lease that gives a Leasehold Mortgagee the privilege of exercising a particular right of Tenant hereunder on condition that Tenant shall have failed to exercise such right shall not be deemed to diminish any privilege that any Leasehold Mortgagee may have, by virtue of a delegation of authority from Tenant, to exercise such right without regard to whether or not Tenant shall have failed to exercise such right. No foreclosure (or deed or other transfer of foreclosure) under any Leasehold Mortgage shall require the consent of Landlord under, or constitute a breach or default under, the Lease.

1.5 If:

(a) Tenant shall default under the provisions of the Lease and Landlord shall give notice of such default as provided under the provisions of the Lease;

(b) such default shall not be remedied within any applicable grace and/or cure period pursuant to the provisions of the Lease; and

(c) Landlord, by reason of such default, shall become entitled to (i) re-enter the Demised Premises or the improvement thereon, or (ii) terminate the Lease or (iii) bring a proceeding to dispossess Tenant and/or any other occupants of the Demised Premises or improvements thereon, re-enter the Demised Premises and/or improvements thereon and/or terminate the Lease,

then, before so re-entering the Demised Premises or the improvements, terminating the Lease or commencing such proceeding, and as a condition precedent thereto, Landlord shall:

(x) give to each Leasehold Mortgagee not less than thirty (30) days additional written notice as to a monetary default (specifying the amount and description thereof to the extent then known to Landlord) or default in furnishing any insurance required to be furnished by Tenant hereunder, or ninety (90) days' additional written notice of any non-monetary default (which shall specify in detail the nature of such default); and

(y) allow each Leasehold Mortgagee:

DRAFT
FOR STUDY PURPOSES ONLY

(A) such thirty (30) days or ninety (90) days (as the case may be) within which to cure the default; or

(B) if such default is a non-monetary default (other than a default in furnishing any insurance required to be furnished by Tenant hereunder) and cannot, with the exercise of due diligence, be cured by such Leasehold Mortgagee within such ninety (90) day period, then provided:

(i) prior to the expiration of such ninety (90) day period, such Leasehold Mortgagee has delivered to Landlord an instrument in writing duly executed and acknowledged wherein it agrees to use reasonable efforts to cure such default; and

(ii) such default is susceptible of being cured by Leasehold Mortgagee and such Leasehold Mortgagee shall, prior to the expiration of such ninety (90) day period, have commenced curing such default, then such ninety (90) day period shall be extended, as long as such Leasehold Mortgagee diligently pursues the curing of such default with continuity, for such period as may be necessary to cure same provided that such period of time shall not be so extended if to do so would subject Landlord to any criminal or civil liability or the cancellation of any insurance required to be maintained by Tenant or the inability to obtain any such insurance.

Nothing herein contained shall affect the right of Landlord, upon occurrence of any subsequent default, to exercise any right or remedy herein reserved to Landlord, subject, however, to the provisions of this Section.

1.6 If:

(a) Tenant shall default in the performance or observance of any term, covenant, or condition of the Lease on Tenant's part to be performed or observed, other than a term, covenant or condition requiring the payment of a sum of money; and

(b) such default is of such a nature that the same either:

(i) cannot practicably be cured by a Leasehold Mortgagee without taking possession of the Demised Premises and/or the improvements thereon; or

(ii) is not susceptible of being cured by any Leasehold Mortgagee, then Landlord shall not:

(x) re-enter the Demised Premises and/or the improvements thereon or serve a notice of election to terminate the Lease;

(y) bring a proceeding to dispossess Tenant and/or any other occupants of the Demised Premises or the improvements, re-enter the Demised Premises and/or the improvements and/or terminate the Lease; or

(z) otherwise terminate the leasehold estate of Tenant hereunder,

If, and for so long as:

DRAFT
FOR STUDY PUROSES ONLY

(A) a Leasehold Mortgagee shall deliver to Landlord, prior to the date on which Landlord shall be entitled to give notice of election to terminate the Lease or re-enter the Demised Premises and/or the improvements, a written instrument, duly executed and acknowledged, in which the Leasehold Mortgagee agrees that:

(X) it will use reasonable efforts to cure such default to the extent the same is susceptible of being cured by the Leasehold Mortgagee, nominee or purchaser; and

(Y) if the Lease thereafter is terminated, or Landlord thereafter re-enters the Demised Premises and/or the improvements prior to the curing of such default, the Leasehold Mortgagee shall pay to Landlord the cost of curing such default; and

(B) if the default is of such a nature that same cannot practicably be cured by a Leasehold Mortgagee without taking possession of the Demised Premises and/or the improvements, a Leasehold Mortgagee shall proceed diligently, subject to any stay in any proceedings involving the insolvency of Tenant or any other person, to obtain possession of the Demised Premises and/or the improvements by foreclosure or deed in lieu of foreclosure, and, upon obtaining such possession, shall promptly cure such default; and

(C) if the default is of such a nature that the same is not susceptible of being cured by any Leasehold Mortgagee, a Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion, subject to any stay in any proceedings involving the insolvency of Tenant or other proceeding or injunction (unless, in the meantime, the Leasehold Mortgagee shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

1.7 No Leasehold Mortgagee shall be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Demised Premises or the Improvements pursuant to subsection (b)(B) of Section 6 or to continue to prosecute foreclosure proceedings pursuant to subsection (b)(C) of Section 6 if and when Tenant's default shall be cured. Nothing contained in Section 6 shall preclude Landlord from exercising any of its rights or remedies with respect to any other default by Tenant during any period of Landlord's forbearance under Section 6 but, in such event, if any Leasehold Mortgagee, any nominee thereof, or any purchaser at a foreclosure sale shall:

(a) acquire title to Tenant's leasehold estate hereunder; and

(b) cure all defaults of Tenant hereunder that are susceptible of being cured by such Leasehold Mortgagee, nominee or purchaser, as the case may be, then the defaults of any prior holder of Tenant's leasehold estate hereunder that are not susceptible of being cured by such Leasehold Mortgagee, nominee or purchaser shall no longer be deemed to be defaults hereunder, provided, however, that nothing herein shall be deemed to relieve such Leasehold Mortgagee, nominee or purchaser from the obligation to cure any monetary defaults of Tenant hereunder, as well as all non-monetary defaults that are susceptible of being cured by such Leasehold Mortgagee.

1.8 If, for any reason, the Lease shall be terminated at the election of Landlord prior to the Expiration Date, Landlord will, on written request of any Leasehold Mortgagee made within thirty (30) days of such termination, enter into a new lease of the Demised Premises with such Leasehold Mortgagee, within thirty (30) days after the receipt of such request, for the remainder of

DRAFT
FOR STUDY PUROSES ONLY

the term, effective as of the date of such termination, at the rent, and upon the other terms, covenants and conditions herein contained, subject, however, to the rights, if any, of the parties then in possession of any part of the Demised Premises, provided that such Leasehold Mortgagee shall:

(a) contemporaneously with such written request upon Landlord for such new lease, pay to Landlord the Rent due and payable by Tenant hereunder as of the date of termination of the Lease (which payments shall be specified in reasonable written detail by Landlord to the Leasehold Mortgagee, and such payments shall be held in escrow until such time as Tenant submits such new lease of the Demised Premises to such Leasehold Mortgagee at which time such payment shall be released from escrow and, if held by Landlord's attorney, shall be paid over to Landlord) and satisfy the Ancillary Duties; and

(b) on or before execution and delivery of said new lease, and as a condition to the execution and delivery thereof by Landlord:

(i) pay to Landlord:

(x) any and all sums which would have been due under the Lease but for such termination from the date of termination of the Lease to the date of execution and delivery of said new lease; and

(y) any reasonable expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) to which Landlord shall have been subjected by reason of such default;

(ii) perform and observe all the other covenants and conditions herein contained on Tenant's part to be performed and observed, to the extent that Tenant shall have failed to perform and observe the same, except that:

(z) with respect to any default that cannot be cured by a Leasehold Mortgagee until it obtains possession of the Demised Premises, the Leasehold Mortgagee shall have a reasonable time, after the Leasehold Mortgagee obtains possession, to cure such default, provided that such Leasehold Mortgagee shall first agree, in writing, to proceed diligently to remedy such default after it obtains possession of the Demised Premises, provided, however, that such extension of time shall not subject Landlord to either civil or criminal liability; and

(aa) in no event shall the Leasehold Mortgagee be required to cure a default not susceptible of cure by the Leasehold Mortgagee or its nominee or purchaser; and

In the event that more than one Leasehold Mortgagee qualifies to receive a new lease pursuant to the terms of this Section, such new lease shall be entered into with the holder of the Leasehold Mortgagee that is most senior in priority. Upon the execution and delivery of such new lease, any subleases that may have theretofore been assigned and transferred to Landlord shall thereupon be assigned and transferred, without recourse by Landlord, to the new tenant; and

(c) return such new lease to Landlord, duly executed and acknowledged, within ten (10) days after receipt thereof from Landlord.

1.9 Except as otherwise provided in Section 8 of the Lease, the rights hereunder of the Leasehold Mortgagees shall be exercisable by them in order of priority of lien of their respective

DRAFT
FOR STUDY PURPOSES ONLY

Leasehold Mortgages. The liability of any Leasehold Mortgagee acquiring Tenant's interest hereunder shall be limited to such Leasehold Mortgagee's then interest in the Demised Premises.

1.10 No Leasehold Mortgagee shall be liable, as tenant, under the provisions of the Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of Tenant's interest hereunder.

1.11 Notwithstanding anything to the contrary contained in the Lease, all proceeds arising from any casualty insurance, business interruption insurance, rental loss insurance or similar insurance policy relating to the Demised Premises and/or any improvements now or hereafter located thereon, and all proceeds of any award or payment made in connection with any condemnation or eminent domain proceeding (or deed or other transfer under threat of the same or in lieu thereof) involving all or any part of the Demised Premises and/or any improvements now or hereafter located thereon, shall be paid to the Leasehold Mortgagees for application in accordance with their respective Leasehold Mortgages.

1.12 Landlord shall, within thirty (30) days after the written request of any Leasehold Mortgagee:

(a) acknowledge in writing to them, or to any of them, the receipt by Landlord of any notice or instrument given, sent, or delivered to Landlord pursuant to the provisions of this Article; and/or

(b) furnish to them, or to any of them, a written statement, duly acknowledged, of the following items:

(i) the amount of net rental due, if any, and amounts due in connection with the failure by Lessee to satisfy the Ancillary Duties or any other provisions of this Lease;

(ii) whether the fire and other insurance required by the Lease have been supplied in compliance therewith;

(iii) whether the Lease is unmodified and in full force and effect (or, if there have been modifications, that the same are in full force and effect as modified and stating the modifications);

(iv) whether, to the best knowledge and belief of Landlord, Tenant is in default, specifying the nature of any known default and any pertinent facts with respect thereto; and

(v) whether Landlord has given Tenant any notice of default under the lease, and if given, whether the default set forth therein remains uncured.

Any such statement shall be for the sole benefit of the Leasehold Mortgagee and shall have no effect, as an estoppel or otherwise, with respect to any third party.

2. Notwithstanding anything to the contrary contained elsewhere herein, upon the acquisition by any Leasehold Mortgagee of leasehold title to the Demised Premises, whether by foreclosure, deed in lieu of foreclosure, acceptance of a new lease pursuant to the terms of the Lease or otherwise, the obligation to pay rent under the Lease (or any such new lease), including, without limitation, any past due rents due under any such lease, shall irrevocably terminate, excepting only in the event 10777

DRAFT
FOR STUDY PUROSES ONLY

Poplar St., L.P., a California limited partnership or an Affiliate thereof shall become owner of the Site (whether of a leasehold or greater interest).

3. Notwithstanding anything to the contrary contained elsewhere herein, upon the acquisition by any Leasehold Mortgagee of leasehold title to the Demised Premises, whether by foreclosure, deed in lieu of foreclosure, acceptance of a new lease pursuant to the terms of the Lease or otherwise, the restrictions, limitations and obligations set forth in Article 6 of the Lease (or any such new lease) shall irrevocably terminate, excepting only in the event 10777 Poplar St., L.P., a California limited partnership or an Affiliate thereof shall become owner of the Site (whether of a leasehold or greater interest).

4. Notwithstanding anything to the contrary contained elsewhere herein, upon the acquisition by any Leasehold Mortgagee of leasehold title to the Demised Premises, whether by foreclosure, deed in lieu of foreclosure, acceptance of a new lease pursuant to the terms of the Lease or otherwise, the restrictions, limitations and obligations set forth in Article 1 of this Rider, as incorporated into the Lease (or any such new lease), shall irrevocably terminate, excepting only in the event 10777 Poplar St., L.P., a California limited partnership or an Affiliate thereof shall become owner of the Site (whether of a leasehold or greater interest).

ATTACHMENT NO. 7

CALCULATION OF AFFORDABLE RENTS

**San Bernardino County
Affordable Rent Worksheet**

(2005 Income Figures)¹

1. Income Eligibility

The first step in determining eligibility for an affordable housing program is determining whether the family which will be purchasing or renting the housing unit meets the following income standards applicable to **San Bernardino** County, based upon the size of the family:

<i>Income Level</i>	<i>1 person household</i>	<i>2 person household</i>	<i>3 person household</i>	<i>4 person household</i>	<i>5 person household</i>	<i>6 person household</i>	<i>7 person household</i>	<i>8 person household</i>
<i>Extremely Low</i>	\$11,700	\$13,350	\$15,050	\$16,700	\$18,050	\$19,400	\$20,700	\$22,050
<i>Very Low</i>	\$19,500	\$22,250	\$25,050	\$27,850	\$30,050	\$32,300	\$34,500	\$36,750
<i>Lower</i>	\$31,200	\$35,650	\$40,100	\$44,550	\$48,100	\$51,700	\$55,250	\$58,800
<i>Median</i>	\$38,950	\$44,500	\$50,100	\$55,650	\$60,100	\$64,550	\$69,000	\$73,450
<i>Moderate</i>	\$46,750	\$53,450	\$60,100	\$66,800	\$72,150	\$77,500	\$82,850	\$88,200

¹ Based on currently effective median income of San Bernardino County, as set forth in 25 Cal. Code Regs. Section 6932, operative as of February 2005. These median income numbers are revised annually.

2. Determining Affordable Rent

For **rental housing**, the second step in determining compliance with affordable housing requirements is determining whether the total rent costs payable by the tenant are within allowable amounts.

For **Very Low Income** Households:¹

- renting a **0 bedroom** unit, monthly rent may not exceed **\$486.88**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$556.25**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$626.25**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$695.63**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$751.25**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$806.88**

For **Lower Income** Households:²

- renting a **0 bedroom** unit, monthly rent may not exceed **\$584.25**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$667.50**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$751.50**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$834.75**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$901.50**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$968.25**

¹ Affordable Rent for Very Low Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(2). *Notwithstanding the foregoing, the limitations of the Agreement, providing for rents limited to 30% of 35% of Median Income and at 30% of 40% of Median Income, as printed in the DDA, shall control.*

² Affordable Rent for Lower Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(3).

DRAFT
FOF STUDY PURPOSES ONLY

In addition, for any Lower Income Household whose income falls within the following guidelines, it is **optional** for the Agency to require that **affordable rent not exceed 30 percent of the gross income of the household:**³

- **1 person households** whose income is between **\$23,370 and \$31,200**
- **2 person households** whose income is between **\$26,700 and \$35,650**
- **3 person households** whose income is between **\$30,060 and \$40,100**
- **4 person households** whose income is between **\$33,390 and \$44,550**
- **5 person households** whose income is between **\$36,060 and \$48,100**
- **6 person households** whose income is between **\$38,730 and \$51,700**
- **7 person households** whose income is between **\$41,400 and \$55,250**
- **8 person households** whose income is between **\$44,070 and \$58,800**

For purposes of determining Affordable Rent, “Rent” is an average of estimated housing costs for the next twelve months. **“Rent”** includes the total of monthly payments for all of the following:⁴

- Use and occupancy of a housing unit and land and facilities associated therewith.
- Any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
- A reasonable allowance for utilities not included in the above costs, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.
- Possessory interest taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.

³ Health and Safety Code Section 50053 (b)(3).

⁴ 25 California Code of Regulations Section 6918.

ATTACHMENT NO. 8

REQUEST FOR NOTICE OF DEFAULT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Loma Linda Redevelopment Agency
22541 Barton Road
Loma Linda, California 92354
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Exempt from recording fees pursuant to Government Code § 6103.

Request for Notice Under Section 2924b Civil Code

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, 200____, in Book _____, Page _____, Official Records of San Bernardino County, California, and describing land therein as

See Exhibit A attached hereto

executed by _____, as Trustor, in which _____ is named as Beneficiary, and _____ as Trustee, be mailed to LOMA LINDA REDEVELOPMENT AGENCY, at 22541 Barton Road, Loma Linda, California 92354, Attention: Executive Director.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A REQUEST MUST BE RECORDED.

Executive Director

Date: _____

ATTACHMENT NO. 9
SCOPE OF DEVELOPMENT

I. GENERAL DESCRIPTION

The Site is specifically delineated on the Site Map and the Legal Description of the Site.

II. DEVELOPMENT

The Developer shall construct forty-four (44) housing units on the Site, together with all on-site and off-site features described in this Scope of Development (as presented to the City Council of the City on March 1, 2006), including without limitation landscaping. All such improvements collectively constitute the “Improvements”. The number of bedrooms for the Required Affordable Units (21 units) is set forth within the definition, Required Affordable Units. The remaining twenty-three units shall consist of: (i) three (3) one-bedroom units; (ii) twelve (12) two-bedroom units; (iii) six (6) three-bedroom units; and four (4) four-bedroom units. The square footages of the respective units shall be as follows: (i) for one-bedroom units, _____ square feet per unit; (ii) for two-bedroom units, _____ square feet per unit; (iii) for three-bedroom units, _____ square feet per unit; and (iv) for four-bedroom units, _____ square feet per unit.

The quality of construction shall be of a high level. The Improvements shall conform to the approved plans on file with the Agency as of the Date of the Agreement as supplemented by the Design Development Drawings (the “Approved Plans”), including all conditions and mitigation measures under: _____ [list City approvals]. The Developer shall develop parking for not less than _____ motor vehicles on Site, of which parking for at least _____ motor vehicles shall be provided in an underground parking structure having secure, direct access to those common areas on the Site that are not accessible to the outside other than through the parking garage or through the common entrance to the Project.

The Developer shall commence and complete the Improvements by the respective times established therefor in the Schedule of Performance.

III. DEVELOPMENT STANDARDS

The Improvements shall conform to all applicable state laws and regulations and to local zoning, applicable provisions of the Municipal Code of the City of Loma Linda (the “Municipal Code”) and the following development standards:

A. General Requirements:

1. Vehicular Access. The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow as approved by the City. In the interest of minimizing traffic congestion, the City will control the number and location of curb breaks for access to the Site for off-street parking and truck loading. All access driveways shall require written approval of the City staff.

2. Building Signs. Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be

DRAFT
FOF STUDY PURPOSES ONLY

permitted, but their height, size, location, color, lighting and design will be subject to City staff approval, and signs must conform to the Municipal Code.

3. Screening. All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by the City staff.

4. Landscaping. The Developer shall provide and maintain landscaping within the public rights-of-way and within setback area along all street frontages and conforming with the plans as hereafter approved by the City.

Landscaping shall consist of trees, shrubs and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to the City staff approval prior to planting.

5. Utilities. All utilities on the Site provided to service the units rehabilitated or reconstructed by the Developer shall be underground at Developer's expense.

6. Building Design. Buildings shall be constructed such that the Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed and in conformance with City approvals.

B. Design Features:

The following design features are considered essential components to the Improvements:

Handicapped Units - Units are to be fully handicapped accessible in compliance with State Housing Code - Title 24 requirements.

Security - The details of security will be reviewed upon submission of the detailed plans.

Overall Design Quality, Materials, Colors, Design Features - Quality of design is important, materials and colors are to be approved by City.

Housing Type - Rental housing for occupancy by forty-four (44) units, consisting of one hundred sixty six (166) one bedroom units and fourteen (14) two bedroom units; such unit mix is subject to modification as provided in the Agreement.

Mobility/Agility - All facilities shall comply, to the extent feasible, with "New Horizon Accessible, Adaptable Apartments for the Physically Disabled" published by the State of California, Department of Housing and Community Development dated July 1989, and shall comply with those portions of Title 24 of the California Code of Regulations that have been adopted by the Department of Housing and Community Development (HCD) relating to handicapped units, and the requirements of the federal Department of Housing and Urban Development, Part VI, 24 C.F.R. Ch. 1, Vol. 56, No. 44, as published in the Federal Register March 6, 1991.

Garages – Garage facilities (and not merely carports) shall be made available for each dwelling unit on Site.

IV. DEMOLITION AND SOILS

The Developer assumes all responsibility for surface and subsurface conditions at the Site, and the suitability of the Site for the Improvements. The Developer has undertaken all investigation of the Site as it shall deem necessary and has not received or relied upon any representations of the Agency, the City, or their respective officers, agents and employees.

V. SPECIAL AMENITIES

The Developer shall undertake all improvements required by the City as a condition of development of the Site, and specifically including an approximately [7,000] square foot community center to be available to occupants of the Site and their guests, as more particularly provided in the City approvals given for the Site.

ATTACHMENT NO. 10

CERTIFICATE OF COMPLETION

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
)
)
)
)
APN: _____)
_____)

(Space Above for Recorder's Use Only)

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 27383.

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (the "Certificate") is made by the **LOMA LINDA REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), in favor of **10777 POPLAR ST., L.P.**, a California limited partnership (the "Developer"), as of the date set forth below.

R E C I T A L S

A. Agency and the Developer have entered into that certain Disposition and Development/Affordable Housing Agreement (the "DDA") dated March 1, 2006 concerning the redevelopment of certain real property situated in the City of Loma Linda, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 4.13 of the DDA, Agency is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the "Improvements" (as defined in Section 1.1 of the DDA), which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of San Bernardino County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. Agency has conclusively determined that the construction and development of the Development has been satisfactorily completed.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Agency does hereby certify that the Improvements to be constructed by the Developer has been fully and satisfactorily completed in full conformance with the DDA.

DRAFT
FOF STUDY PURPOSES ONLY

2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.

3. This Certificate shall not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA (including without limitation the attachments thereto).

IN WITNESS WHEREOF, Agency has executed this Certificate of Completion this ____ day of _____, 200__.

LOMA LINDA REDEVELOPMENT AGENCY, a
public body, corporate and politic

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

Pamela Byrnes-O'Camb, Secretary

DRAFT

FOF STUDY PURPOSES ONLY

EXHIBIT “A” TO ATTACHMENT NO. 10

LEGAL DESCRIPTION

[To Be Attached]

ATTACHMENT NO. 11

AGENCY DEVELOPER CC&RS

RECORDING REQUESTED BY:)
)
WHEN RECORDED RETURN TO AND)
MAIL TAX STATEMENTS TO:)
)
Loma Linda Redevelopment Agency)
22541 Barton Road)
Loma Linda, California 92354)
Attn: Executive Director)
)

(Space above for Recorder's Use.)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

By: _____

REGULATORY AGREEMENT

These Covenants, Conditions and Restrictions, herein sometimes referred to as these "CC&Rs" or "Declaration" or "Regulatory Agreement" are made by the signatories hereto.

R E C I T A L S

WHEREAS, each of the **Loma Linda Redevelopment Agency**, a public body, corporate and politic ("Agency"), the **City of Loma Linda**, a municipal corporation ("City"), and **10777 POPLAR ST., L.P.**, a California limited partnership ("Developer") is a party to this Declaration. The Agency, the City and the Developer are sometimes collectively referred to herein as the "Declarants".

WHEREAS, the Agency and the Developer have entered into that certain Disposition and Development/Affordable Housing Agreement dated as of March 1, 2006 (the "DDA") for the improvement and development of certain real property described in Exhibit "A" (to which these CC&Rs are attached) as the "Site", which DDA provides for the recordation of this Regulatory Agreement. The DDA is incorporated herein by this reference and any capitalized term not defined herein shall have the meaning established therefor in the DDA. The City is a third party beneficiary of the DDA.

WHEREAS, this Regulatory Agreement establishes a plan for the improvement, development and maintenance of the Site, for the benefit of the Project Area, as well as the rest of the City.

DRAFT
FOF STUDY PURPOSES ONLY

WHEREAS, it is contemplated under the DDA that, as of the recordation of this Regulatory Agreement, the Developer has entered into or will enter into a lease of the “Site” and described in the legal description attached hereto as Exhibit “A” and incorporated herein by this reference. The form of the lease, as prescribed by the DDA, is referenced to as the “Agency Lease.”

WHEREAS, the DDA sets forth certain restrictive covenants applicable to the Site, particularly the use of the Site for the provision of rental housing units available to Very Low Income Households and Lower Income Households at Affordable Rents as those terms are defined therein.

WHEREAS, Agency, City, and Developer wish to adopt this Regulatory Agreement to further govern the use of the Site in conjunction and along with the DDA and to ensure that the Agency achieves credit for production of affordable housing units pursuant to Section 33413 of the California Health and Safety Code.

NOW, THEREFORE, the Agency and the City each of the Developer (as owner of real property interests described hereinabove), in the City, declares that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the Covenants, Conditions and Restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property, and the Agency and the City. Each and all of the restrictions, limitations, conditions, covenants, liens, reservations and charges herein contained shall run with the land and be recorded on the property title and shall be binding on Declarants, their grantees, successors, heirs, executors, administrators, devisees or assigns, and all subsequent owner of all or any part of the Site.

ARTICLE I
DEFINITIONS

The definitions provided herein shall be applicable to this Declaration and also to any amendment or supplemental Declaration (unless the context implicitly or explicitly shall prohibit), recorded against the Site pursuant to the provision of this Declaration.

Section 1. “Affordable Housing Project” means an affordable housing project operated in conformity with this Regulatory Agreement throughout the Required Covenant Period.

Section 2. “Affordable Rent” has the meaning set forth in Health and Safety Code Section 50053 excepting to the extent a lesser amount is prescribed hereunder. For a Very Low Income Household, Affordable Rent means a monthly rent which does not exceed one twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of the Median Income for the Area for a household size appropriate to the unit; provided that in the event a household has a qualifying income of up to thirty-five percent (35%) of the Median Income, then, notwithstanding the foregoing portion of this definition, Affordable Rent shall be deemed to be limited to thirty percent (30%) of thirty-five percent (35%) of Median Income, and in the event a household has a qualifying income of greater than thirty-five percent (35%) but not in excess of forty percent (40%) of the Median Income, then, notwithstanding the foregoing portion of this definition, Affordable Rent shall be deemed to be limited to thirty percent (30%) of forty percent (40%) of Median Income. For a Lower Income Household, Affordable Rent means a monthly rent which does not exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of the Median Income for the Area. “Household size appropriate to the unit,” as used herein, shall mean two persons for each one-bedroom unit (if any), and three persons for each two bedroom unit. The maximum monthly rental amount of the units shall be adjusted annually by the formula set forth above upon the promulgation of revised San

DRAFT
FOF STUDY PURPOSES ONLY

Bernardino Primary Metropolitan Statistical Area median income figures by regulation of the California Department of Housing and Community Development. Actual rent charged may be less than such maximum rent.

Section 3. “Agency” means the Loma Linda Redevelopment Agency and its successors in interest.

Section 4 “Approved Housing Project” means all improvements as provided to be developed by Developer under the DDA. The Approved Housing Project must be completed in strict conformity with all specifications contained in or referred to in the DDA.

Section 4. “Area” means the San Bernardino Primary Metropolitan Statistical Area, as periodically defined by HUD.

Section 5. “Calculation of Affordable Rents” means the worksheet substantially in the form of Attachment No. 7 to the DDA.

Section 6. “Certificate” or “Certification” is defined in Section 3(a).

Section 7. “City” means and refers to the City of Loma Linda, a municipal corporation.

Section 8. “City Code” means and refers to the City of Loma Linda Municipal Code as revised from time to time.

Section 9. “Common Areas” means all areas on the Site that are open or accessible to all tenants of the Site (such as grounds, but excluding buildings).

Section 10. [Intentionally Omitted].

Section 11. “Gross Income” means all payments from all sources received by a person (together with the gross income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) whether in cash or in kind as calculated pursuant to the Department of Housing and Urban Development (“HUD”) Regulations (24 C.F.R. § 813) in effect as of the Date of Agreement.

Section 12. [Intentionally Omitted].

Section 13. Lower Income Household shall mean a household earning not greater than eighty percent (80%) of median income for the Area as set forth by regulation of the California Department of Housing and Community Development, pursuant to Health and Safety Code Section 50079.5.

Section 14. “Median Income for the Area” means the median income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

Section 15. “Prescribed Rent Levels” means rent that is Affordable Rent for households at the following income levels: (i) for one (1) one-bedroom unit, three (3) two-bedroom units, and

DRAFT
FOF STUDY PURPOSES ONLY

two (2) three-bedroom units, thirty five percent (35%) of Median Income; (ii) for two (2) one-bedroom units, five (5) two-bedroom units, four (4) three-bedroom units and two (2) four-bedroom units, forty percent (40%) of Median Income; and (iii) for two (2) four-bedroom units, sixty percent (60%) of Median Income.

Section 16. “Regulatory Agreement” means this Regulatory Agreement and any amendments, modifications or supplements which may also be referred to herein as these “CC&Rs” or this “Declaration”.

Section 17. “Rental Project” means the forty-four (44) unit residential rental development on the Site.

Section 18. “Required Affordable Unit” means a dwelling unit in the Rental Project, as rehabilitated or reconstructed under the DDA, and available to, occupied by, or held vacant for occupancy only by tenants qualifying as Very Low Income Households or Lower Income Households and rented at Affordable Rent conforming to the Prescribed Rent Levels.

Section 19. “Required Covenant Period” means the period commencing on the date this Regulatory Agreement is recorded and ending sixty (60) years thereafter.

Section 20. “Site” means all of the real property and appurtenances as described above, including all structures and other improvements thereon, and those hereafter constructed.

Section 21. “Unit” means a dwelling unit on the Rental Project.

Section 22. “Very Low Income Households” means Very Low Income Households whose Adjusted Income does not exceed fifty percent (50%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50105.

ARTICLE II
LAND USE RESTRICTIONS; IMPROVEMENTS

Section 1. Uses. The Developer shall develop the Approved Housing Project on the Site in conformity with the DDA. Thereafter, the Site shall be operated as an Affordable Housing Project and devoted only to the uses specified in the DDA and the Agency Lease for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to the DDA, shall conform to all applicable provisions of the Loma Linda Municipal Code and the City Approvals.

The Site shall be used, maintained and operated in accordance with the DDA, the Agency Lease, and this Regulatory Agreement for the Required Covenant Period. None of the units in the Rental Project shall at any time be utilized on a transient basis nor shall the Rental Project or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer court or park. No part of the Site, from the date the Developer acquired title to the Site, has been or will at any time be owned or used as a cooperative housing corporation or a community apartment project or a stock cooperative.

Section 2. Affordable Housing.

Number of Units. Throughout the Required Covenant Period, not less than twenty one (21) of the Units shall be rented at “Prescribed Rent Levels”. “Prescribed Rent Levels” means rent that is Affordable Rent for households at the following income levels: (i) for one (1) one-bedroom unit, three (3) two-bedroom units, and two (2) three-bedroom units, thirty five percent (35%) of Median Income; (ii) for two (2) one-bedroom units, five (5) two-bedroom units, four (4) three-bedroom units and two (2) four-bedroom units, forty percent (40%) of Median Income; and (iii) for two (2) four-bedroom units, sixty percent (60%) of Median Income. Required Affordable Units shall be continuously occupied by or held available for occupancy by Very Low Income Households or, if applicable, Lower Income Households at an Affordable Rent. All Required Affordable Units shall be rented at Affordable Rent. For this purpose, a tenant who qualifies as a Very Low Income Household (or a Lower Income Household) at the time he or she first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as a recertification of such individual’s or family’s income in accordance with Section 3 below demonstrates that such individual or family no longer qualifies as a Very Low Income Household (or a Lower Income Household). Moreover, a unit previously occupied by a Very Low Income Household (or a Lower Income Household), and then vacated shall be considered occupied by such Very Low Income Household (or a Lower Income Household) until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

At such time as a tenant ceases to qualify as a Very Low Income Household (or a Lower Income Household), the unit occupied by such tenant shall cease to be a Very Low Income Unit (or a Lower Income Unit). The Developer shall replace each such Very Low Income Unit (or a Lower Income Unit) by designating the next available unit and any necessary units thereafter as a Very Low Income Unit (or a Lower Income Unit). For purposes of this Agreement, such designated unit will be considered a Very Low Income Unit (or a Lower Income Unit) if it is held vacant and available for occupancy by a Very Low Income Household (or a Lower Income Household), and, upon occupancy, the income eligibility of the tenant as a Very Low Income Household (or a Lower Income Household) is verified and the unit is rented at Affordable Rent.

In the event a household’s income initially complies with the corresponding income restriction (for a Very Low Income Household or a Lower Income Household, whichever is applicable) but the income of such household increases, such increase shall not be deemed to result in a violation of the restrictions of this Regulatory Agreement concerning limitations upon income of occupants, provided that the occupancy by such household is for a reasonable time of not to exceed one year (measured from the time the income of the household ceases to qualify at the designated affordability level). The Developer shall include in its rental agreements provisions which implement this requirement and limitation, and the Developer shall expressly inform prospective renters as to this limitation prior to the commencement of a tenancy.

Duration of Affordability Requirements. The Required Affordable Units shall be available to and occupied by Very Low Income Households or, within the limitations set forth above, Lower Income Households, at Affordable Rent throughout the Required Covenant Period. All tenants residing in the Affordable Units during the last two (2) years of the Required Covenant Period shall be given notice by the Developer at least once every six (6) months prior to the expiration date of this requirement, that the rent payable on the Affordable Unit may be raised to a market rate rent at the end of the Required Covenant Period.

DRAFT
FOF STUDY PURPOSES ONLY

Selection of Tenants. As specified hereinbelow, Developer shall demonstrate to the Agency that the proposed tenants of each of the Required Affordable Units constitutes a Very Low Income Household or, within the limitations set forth above, a Lower Income Household.

Prior to the rental or lease of an Required Affordable Unit to a tenant, and as set forth in this Section 2 of Article II of this Declaration, the Developer shall require the tenant to execute a written lease and to complete an Income Verification certifying that the tenant(s) occupying the Required Affordable Unit is/are a Very Low Income Household or, if applicable, a Lower Income Household and meet(s) the eligibility requirements established for the Required Affordable Unit. The Developer shall verify the income of the tenant(s).

The Developer shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Developer shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

Determination of Affordable Rent for the Affordable Units. The Affordable Units shall be rented or leased at Affordable Rent. As of the approval of the DDA, Affordable Rent is calculated in accordance with the Affordable Rent Worksheet. The maximum monthly rental for the Affordable Unit shall be adjusted annually as permitted by Section 50053 of the California Health and Safety Code based on the annual adjustment to the Median Income for the Area established pursuant to Section 50093 of the California Health and Safety Code, as more particularly set forth in the Affordable Rent Worksheet.

THE DEVELOPER UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL FOR THE AFFORDABLE UNITS ESTABLISHED BY THE DDA, THIS REGULATORY AGREEMENT AND THE AGENCY LEASE IS SUBSTANTIALLY BELOW THE FAIR MARKET RENT FOR THE AFFORDABLE UNITS.

Developer Initials: _____

Section 3. Developer Verification and Program Compliance.

Income Verification and Certification. The Developer will obtain and maintain on file an Income Verification from each tenant, dated immediately prior to the initial occupancy of such tenant in the Rental Project.

On July 31, 2007 and annually thereafter, the Developer shall file with the Agency or its designee a Certificate, containing all information required pursuant to Health and Safety Code Section 33418, in a form prescribed by the Agency. Each Certificate shall cover the immediately preceding fiscal year.

Reporting Amounts. Agency is required by Section 33418 of the California Health and Safety Code to require Developer to monitor the Affordable Units and submit the annual reports required by Section 3 of Article II of this Declaration. The Agency relies upon the information contained in such reports to satisfy its own reporting requirements pursuant to Sections 33080 and 33080.1 of the California Health and Safety Code. In the event the Developer fails to submit to the Agency or its designee the Certification as required by Section 3(a), the Developer shall be in

DRAFT
FOF STUDY PURPOSES ONLY

noncompliance with this Regulatory Agreement. In the event the Developer remains in noncompliance for thirty (30) days following receipt of written notice from the Agency of such noncompliance under Sections 3(a) and 3(b) of Article II hereinabove, then the Developer shall, without further notice or opportunity to cure, pay to the Agency Two Hundred Fifty Dollars (\$250.00) per Required Affordable Unit for each year Developer fails to submit a Certificate covering each and every housing unit on the Site.

Section 4. Nondiscrimination. The Developer shall refrain from restricting the rental, sale or lease of the Site, or any portion thereof, on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

(3) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

The covenants established in this Declaration and the deeds of conveyance for the Site shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the City and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination as set forth in this Section 1 of Article II shall remain in effect in perpetuity.

DRAFT
FOF STUDY PURPOSES ONLY

Section 5. Keeping of Animals. No animals of any kind shall be raised, bred or kept on the Site, except that domesticated dogs, cats or other household pets may be kept by the tenants in the Rental Project at the discretion of Developer and subject to compliance with all laws. However, no animal shall be kept, bred or maintained for any commercial purpose or for fighting purposes. Nothing permitted herein shall derogate in any way the right of the Developer to further restrict keeping of pets.

Section 6. Parking of Vehicles. The Developer shall not permit the parking, storing or keeping of any vehicle except wholly within the parking areas designated for the Required Affordable Units. The Developer shall not permit the parking, storing or keeping of any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), or any recreational vehicle over twenty (20) feet in length (camper unit, motor home, trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length, or any vehicle other than a private passenger vehicle, upon any portion of the Common Areas, including parking spaces. For purposes of this section, a pickup truck with a pickup bed mounted camper shall be considered a private passenger vehicle; provided however, that no such vehicle shall be used for residential purposes while parked on the premises.

The Developer shall not permit major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle to be conducted upon any portion of the Common Area, including the parking areas, except for emergency repairs thereto and then only to the extent necessary to enable movement of the vehicle to a proper repair facility. No inoperable vehicle shall be stored or kept in the Common Area. The Developer shall give the vehicle owner not less than four (4) days, nor more than seven (7) days notice and an opportunity to remove any vehicle parked, stored or kept in violation of the provisions of this Declaration. Notice shall consist minimally of a reasonably diligent attempt to personally notify the vehicle owner or alternatively leaving written notice on the subject vehicle. After due notice and opportunity have been given to the vehicle owner, the Developer shall have the right to remove, at the vehicle owner's expense, any vehicle parked, stored or kept in violation of the provisions of this Declaration.

Section 7. Maximum Occupancies. No persons shall be permitted to occupy any Apartment within the Rental Project in excess of applicable limit of maximum occupancy set by the Loma Linda Municipal Code and the laws of the State of California.

Section 8. Signs Required. "No loitering" signs will be posted at each building and enforced by the owner(s). "Illegally parked vehicles will be towed" signs in compliance with California Vehicle Code requirements will be posted and enforced by the Developer.

Section 9. Fences and Electronic Installations. The Developer shall not install or knowingly permit to be installed on the exterior of any improvement or building on any fences or any antenna or other television or radio receiving device, excepting satellite dishes having a diameter of eighteen inches (18") or less, without prior written consent of City. This prohibition shall not prohibit the installation of cable television or subscription wires or receiving devices.

Section 10. Structural Change. Nothing shall be done on the Site in, on or to any building which would structurally change the exterior or the interior bearing walls of any such building or structure, except as otherwise provided herein. Nothing herein shall affect the rights of the Developer to repair, alter or construct improvements on the buildings on the Site unless such repair, alteration or improvement would impair the structural integrity and/or exterior appearance of said

DRAFT
FOF STUDY PURPOSES ONLY

buildings. Nothing herein shall be deemed to prohibit work ordered to be performed by the City building official.

Section 11. Compliance with Laws. The Developer shall comply with all applicable laws in connection with the development and use of the Site, including without limitation the California Community Redevelopment Law (Health and Safety Code section 33000, *et seq.*) and Fair Housing Act (42 U.S.C. § 3601, *et seq.*, and 24 C.F.R. § 100.300, *et seq.*). The Developer is a sophisticated party, with substantial experience in the acquisition, development, financing, obtaining financing for, marketing, and operation of affordable housing projects, and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Developer is familiar with and has reviewed all laws and regulations pertaining to the acquisition, development and operation of the Rental Project and has obtained advice from any advisers of its own choosing in connection with this Agreement.

ARTICLE III
DUTIES OF DEVELOPER: SPECIFIC MAINTENANCE RESPONSIBILITIES

Section 1. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

Section 2. Front and Side Exteriors. The Developer shall at all times maintain the front exterior and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair and any visible side exteriors. The Developer shall hire maintenance personnel to maintain and/or repair any front exterior or yard or visible side yard and exterior of any lot or building.

Section 3. Graffiti Removal. All graffiti, and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed by the later to occur of (i) seventy-two (72) hours of their creation or (ii) seventy-two (72) hours after notice to Developer.

Section 4. Driveways. All driveways must be paved and maintained with impervious material in accordance with the Loma Linda Municipal Code. In addition, all water must be made to drain freely to the public part of the waterway without any pooling.

Section 5. Exterior Illumination. The Developer shall at all times maintain adequate lighting in all entrance ways, garages and parking areas. Adequate lighting shall mean outdoor, night lighting designed and installed, which provides no less than one (1.0) foot candles in the parking areas and no less than one and one-half (1-1/2) foot candles in the walking areas or common areas and no less than 0.2 foot candles at the point of least illumination.

Section 6. Front Setbacks. All front setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained by the Developer. The landscaping shall meet minimum standards set from time to time by the City.

DRAFT
FOF STUDY PURPOSES ONLY

Section 7. Trash Bins. All trash shall be collected and placed at all times in an enclosable bin to be placed in a designated refuse/trash bin area. The designated area shall be located so that the bin will, to the extent possible, be readily accessible from the street.

Section 8. Prohibited Signs. No sign of any kind shall be displayed to the public view on or from any portion of the Site without the approval of the City and appropriate City departments if any as required by the City Code.

ARTICLE IV
OBLIGATION TO MAINTAIN, REPAIR AND REBUILD

Section 1. Maintenance by Developer. The Developer shall, at its sole cost and expense, maintain and repair the Site and the improvements thereon keeping the same in a decent, safe and sanitary manner, in accordance with the United States Department of Housing and Urban Development ("HUD") Housing Quality Standards ("HQS"), and in good condition and making all repairs as they may be required by these CC&Rs and by all applicable Municipal Code and Uniform Code provisions. The Developer shall also maintain the landscaping required to be planted in a healthy condition. If, at any time, Developer fails to maintain the Rental Project or any portion thereof, and said condition is not corrected after the expiration of forty-five (45) days from the date of written notice from the Agency, either the Agency or the City may perform the necessary maintenance and Developer shall pay such costs as are reasonably incurred for such maintenance. Payment shall be due within fifteen (15) days of receipt of an invoice from the Agency or the City.

Section 2. Damage and Destruction Affecting Project - Developer's Duty to Rebuild. If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Developer to rebuild, repair or reconstruct said portion of the Site and/or the improvements in a timely manner which will restore it to Code compliance condition.

In furtherance of the requirements of this Section 2, Developer shall keep the construction on the Site insured by carriers at all times satisfactory to Agency against loss by fire and such other hazards, casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy, in an amount of the full replacement cost of the constructions. In the event of loss, Developer shall give prompt notice to the insurance carrier and to the Agency.

If the Site is abandoned by the Developer, or if Developer fails to respond to Agency within thirty (30) days from the date notice is mailed by Agency to Developer that the insurance carrier offers to settle a claim for insurance benefits, Agency is authorized to collect and apply the insurance proceeds at Agency's option either to restoration or repair of the Site.

Section 3. Variance in Exterior Appearance and Design. In the event the Rental Project sustains substantial physical damage due to a casualty event, the Developer may apply to the City of Loma Linda for approval to reconstruct, rebuild or repair in a manner which will provide different exterior appearance and lot design from that which existed prior to the date of the casualty.

Section 4. Time Limitation. Upon damage to the Site or the Rental Project or other improvements, the Developer shall be obligated to proceed with all due diligence hereunder and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after damage occurs or demolition and vacate within two (2)

months, unless prevented by causes beyond their reasonable control, in which event reconstruction shall be commenced at the earliest feasible time.

ARTICLE V
ENFORCEMENT

Section 1. Remedies. Breach of the covenants contained in the Declaration may be enjoined, abated or remedied by appropriate legal proceeding by the Agency or City.

This Declaration does not in any way infringe on the right or duties of the City of Loma Linda to enforce any of the provisions of the Loma Linda Municipal Code including, but not limited to, the abatement of dangerous buildings.

Section 2. Nuisance. The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

Section 3. Right of Entry. In addition to the above general rights of enforcement, the City shall have the right through its agents and employees, to enter upon any part of the project area for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities. In addition, the City has the right of entry at reasonable hours and upon and after reasonable attempts to contact Developer, on any lot to effect emergency repairs or maintenance which the Developer has failed to perform. Subsequent to sixty (60) days written notice to the Developer specifically outlining the Developer's noncompliance, the City shall have the right of entry on the Site at reasonable hours to enforce compliance with this Declaration which the Developer has failed to perform. The Agency shall additionally have rights of entry as a landlord under the Agency Lease.

Section 4. Costs of Repair. The costs borne by the City or Agency of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Developer shall be responsible.

Section 5. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

Section 6. Failure to Enforce. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

Section 7. Enforcement and Nonliability. The City or Agency may from time to time make such efforts, if any, as it shall deem appropriate enforce and/or assist in enforcing this Declaration. However, neither the Agency nor the City will not be subject to any liability for failure to affirmatively enforce any provision of this Declaration.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Covenant Against Partition. By acceptance of its interest in the Site, the Developer shall be deemed to covenant for itself and for its heirs, representatives, successors and assigns, that it will not institute legal proceedings or otherwise seek to effect partition of its right and interest in the interest being conveyed to the Developer, or the burdens running with the land as a result of this Regulatory Agreement.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

Section 3. Term. This Declaration shall run with and bind the interest of the Developer in the Site, and shall inure to the owner(s) of any property subject to this Declaration, his legal representatives, heirs, successors and assigns, and as provided in Article VI, Sections 2 and 3, be enforceable by the City, for a term equal to the Required Covenant Period as defined in the DDA, provided; however, that the covenants regarding nondiscrimination set forth in Section 4 of Article II of this Declaration shall remain in effect for perpetuity.

Section 4. [Intentionally Omitted].

Section 5. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of rental housing available at Affordable Rent for Very Low Income Households and Lower Income Households. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

The Developer shall be obligated by this Declaration to comply with the provisions hereof, as well as the Agency Lease. In the event of conflict, the Developer shall comply with the most stringent requirements, in each case.

Section 6. Amendments. This Declaration may be amended only by the written agreement of the Developer, the Agency and the City.

Section 7. Encroachments. None of the rights and obligations of the Developer created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of Developer if said encroachment occurs due to the willful conduct of said Developer.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein to Developer shall be in writing and may be delivered either personally or by certified mail. Notice to the Agency shall be made by certified mail to the Executive Director or his designee at 22541 Barton Road, Loma Linda, California 92354 (with a copy to Stradling Yocca Carlson & Rauth, Attention: Mark J. Huebsch, 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660), and shall be effective upon receipt. Notice to Developer shall be made by certified mail to 10777 Poplar St., L.P., a California limited partnership, 15303 Ventura Blvd., Suite 1100, Sherman

DRAFT

FOF STUDY PURPOSES ONLY

Oaks, California 91403, and shall be effective upon receipt. Notice to Developer's limited partner shall be made by certified mail to _____, c/o 10777 Poplar St., L.P., a California limited partnership, 15303 Ventura Blvd., Suite 1100, Sherman Oaks, California 91403, Attention: General Counsel and shall be effective upon receipt. Such addresses may be changed from time to time by notice in writing.

DRAFT
FOF STUDY PURPOSES ONLY

LOMA LINDA REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

By: _____
Pamela Byrnes-O'Camb, Secretary

CITY OF LOMA LINDA,
a municipal corporation

Dated: _____

By: _____
Dennis R. Halloway, City Manager

ATTEST:

By: _____
Pamela Byrnes-O'Camb, City Clerk

10777 POPLAR ST., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

EXHIBIT A
LEGAL DESCRIPTION

[To Come]

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On ___, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- ☐ personally known to me
- or-**
- ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER**DESCRIPTION OF ATTACHED DOCUMENT**

- ☐ Individual
- ☐ Corporate Officer

Title(s)

Title Or Type Of Document

- | | | | |
|--------------------------|----------------------|--------------------------|---------|
| <input type="checkbox"/> | Partner(s) | <input type="checkbox"/> | Limited |
| | | <input type="checkbox"/> | General |
| <input type="checkbox"/> | Attorney-In-Fact | | |
| <input type="checkbox"/> | Trustee(s) | | |
| <input type="checkbox"/> | Guardian/Conservator | | |
| <input type="checkbox"/> | Other: _____ | | |

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On ___, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- ☐ personally known to me
-or-
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On ___, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

- ☐ personally known to me
-or-
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

ATTACHMENT NO. 12

INCOME VERIFICATION

Part I -- General Information

1. Project Location: _____
2. Landlord's Name: _____

Part II -- Unit Information

- | | | | |
|-------------------|--------------------------|--------------------|---------------------------|
| 3. Unit
Number | 4. Number of
Bedrooms | 5. Monthly
Rent | 6. Number of
Occupants |
|-------------------|--------------------------|--------------------|---------------------------|

Part III -- Affidavit of Tenant

I, _____, and I, _____, as applicants for rental of an Apartment Unit at the above-described location, do hereby represent and warrant as follows:

- A. (My/Our) gross income (anticipated total annual income) **does not exceed thirty-five percent (35%)** of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

- B. (My/Our) gross income (anticipated total annual income) does not exceed forty percent (40%) of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12 month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

- C. (My/Our) gross income (anticipated total annual income) does not exceed fifty percent (50%) of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12 month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

- D. (My/Our) gross income (anticipated total annual income) exceeds fifty percent (50%) but **does not exceed eighty percent (80%)** of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

- E. (My/Our) gross income (anticipated total annual income) exceeds eighty percent (80%) but **does not exceed one hundred twenty percent (120%)** of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

- F. (My/Our) gross income (anticipated total annual income) **exceeds one hundred twenty (120%)** of the median income for the San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant(s)' Initials

1. All tenants must complete the following:

Monthly Gross Income (All Sources of Income of All Adult Household Members Must be Listed)

Source	Head of Household	Co-Tenants	Total
Gross amount, before payroll deductions of wages, salaries, overtime pay, commissions, fees, tips and bonuses			
Interest and/or dividends			
Net income from business or from rental property			
Social security, annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically			
Payment in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay			
Alimony, child support, other periodic allowances			
Public assistance, welfare payments			
Regular pay, special pay and allowances of members of Armed Forces			
Other			

Total: _____

Total x 12 _____ = Gross Annual Household Income

Note: The following items are **not** considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation),

DRAFT
FOF STUDY PURPOSES ONLY

capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

2. This affidavit is made with the knowledge that it will be relied upon by the Landlord to determine maximum income for eligibility and (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 of this Part III is reasonable and based upon such investigation as the undersigned deemed necessary.
3. (I/We) will assist the Landlord in obtaining any information or documents required to verify the statements made in this Part III and have attached hereto copies of federal income tax return for most recent tax year in which a return was filed (past two years federal income tax returns for self-employed persons).
4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable the Landlord and/or the Loma Linda Redevelopment Agency to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Date

Tenant

Date

Tenant

**INCOME VERIFICATION
(for employed persons)**

The undersigned employee has applied for a rental unit located in a project financed under a multifamily housing program of the City of Loma Linda and the Loma Linda Redevelopment Agency for persons of low or moderate income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages _____

Overtime _____

Bonuses _____

Commissions _____

Total current income _____

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature

Date

Title

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under a multifamily housing program of the City of Loma Linda and the Loma Linda Redevelopment Agency.

Signature

Date

Please send to:

DRAFT

FOF STUDY PURPOSES ONLY

INCOME VERIFICATION
(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature

Date

ATTACHMENT NO. 13

AGENCY NOTE

PROMISSORY NOTE

_____, 2006
Loma Linda, California

\$(to come: conform to DDA text)

FOR VALUE RECEIVED, the undersigned 10777 POPLAR ST., L.P., a California Limited Partnership, a California non-profit public benefit corporation ("Maker" or "Developer"), having its principal place of business at 100 West Broadway, Suite 1100, Sherman Oaks, California 91403, promises to pay to the order of LOMA LINDA REDEVELOPMENT AGENCY, a public body, corporate and politic ("Payee"), at 22541 Barton Road, Loma Linda, California 92354, or at such other place as the holder of this Note from time to time may designate in writing, the principal sum of \$(to come: conform to DDA text), together with interest on the unpaid principal amount of this Promissory Note ("Note") from time to time outstanding at the Designated Rate which, unless otherwise determined under the "DDA" (as defined below), shall be equal to the "Applicable Interest Rate," as defined in the DDA (herein, the "Interest Rate") in lawful money of the United States of America. This Note is being delivered pursuant to the Disposition and Development/Affordable Housing Agreement dated as of March 1, 2006, between Maker and Payee (the "DDA"). The loan evidenced by this Note shall be governed by such provisions of the DDA (including without limitation the attachments thereto) as shall be applicable. All capitalized terms used herein shall have the meanings set forth therefor in the DDA. The amount of this Note is based upon the disbursement of moneys by Agency under Section 2.1.1 of the DDA. Interest shall accrue only on the amounts so disbursed.

1. Payments of Principal and Interest. Payments hereunder shall be due on the seventy-fifth (75th) day following the last day of each "Lease Year" (as that term is defined in the Section 1.1 of the Agency Lease). On each payment date, Maker shall pay to Payee an amount equal to fifty percent (50%) of "Residual Receipts" (as that term is defined in the DDA), if any, for the corresponding Lease Year; provided that in the event a "Capital Event" (as that term is defined in Section 5.4 of the Agency Lease) occurs, the Maker shall pay an amount equal to seventy-five percent (75%) of Residual Receipts, if any, for the corresponding Lease Year and during each Lease Year until December 31, 2067. In addition, if a Capital Event occurs, Maker shall pay to Payee an amount equal to the lesser of (a) one-half (1/2) of the net proceeds of such sale, assignment, transfer or refinancing, determined by applying those closing costs of unrelated third parties which do not exceed normal and customary costs charged by such unrelated third parties or (b) seventy-five percent (75%) of the net proceeds remaining after repayment of the Primary Construction Loan and the Primary Permanent Loan. In addition, at the option of the Payee, payments on the obligation evidenced by this Note shall be accelerated and shall be immediately due and payable in the event of the occurrence of any default under the DDA, the Agency Deed of Trust, the Agency Developer CC&R's or the Agency Lease. The Maker agrees and acknowledges that additional payments will be required, notwithstanding the satisfaction of this Agency Note, under the DDA.

DRAFT
FOF STUDY PURPOSES ONLY

2. Other Loan Documents. Repayment of this Note is secured by a deed of trust (the “Deed of Trust”) of this date executed by Maker for the benefit of Payee encumbering the property described in the Deed of Trust (the “Property”).

3. Prepayment. Maker shall have the right to prepay amounts owing under this Note at any time.

4. Due on Sale or Encumbrance. In the event of any Transfer (as defined below) of the Property, or any portion thereof or interest therein, Payee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Property, granting of an option to purchase any portion of or interest in the Property or any interest therein, or the lease of all or substantially all of the Property or of all or substantially all of the improvements located thereon. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Developer’s limited partner of its partnership interest to the extent permitted by the DDA nor shall Transfer include the removal or any general partner of Developer by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Developer’s partnership agreement to the extent permitted by the DDA. “Transfer” shall not include the leasing of individual dwelling units on the Property so long as Trustor complies with the provisions of the Agency Developer CC&Rs, the Agency Lease and the DDA relating to such leasing activity. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. Subordination to Multifamily Note. [To come: it is contemplated that payment under this Note is to be subordinated to a loan made in connection with multifamily bonds].

6. Miscellaneous.

(a) Governing Law. All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

(b) Binding on Successors. This Note shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this Note.

(c) Attorneys’ Fees.

(i) Maker shall reimburse Payee for all reasonable attorneys’ fees, costs and expenses, incurred by Payee in connection with the enforcement of Payee’s rights under this Note, including, without limitation, reasonable attorneys’ fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys’ fees, costs and expenses incurred to protect Payee’s security and attorneys’ fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term “expenses” means any expenses incurred by Payee in connection

DRAFT
FOF STUDY PURPOSES ONLY

with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Payee in connection with any such proceeding.

(ii) Payee shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this Note into any judgment on this Note.

(d) Entire Agreement. This Note and the relevant provisions of the DDA constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supercede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(e) Time of the Essence. Time of the essence with respect to every provision hereof.

(f) Waivers by Maker. Except as otherwise provided in any agreement executed in connection with this Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.

(g) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

(h) Non-recourse Liability of Developer. Notwithstanding anything to the contrary of this Note, neither Developer nor any of its partners shall be personally liable for any default, loss, claim, damage, expense or liability or any person and the sole remedy against Developer hereunder shall be limited to its interest in the Development.

DRAFT

FOF STUDY PURPOSES ONLY

10777 POPLAR ST., L.P.,
a California Limited Partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

ATTACHMENT NO. 14
AGENCY DEED OF TRUST

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

Loma Linda Redevelopment Agency
22541 Barton Road
Loma Linda, California 92354
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS
(SHORT FORM)

This DEED OF TRUST, made as of _____, 2006, between

10777 POPLAR ST., L.P., a California limited partnership, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:
15303 Ventura Blvd., Suite 1100, Sherman Oaks, California 91403

ALLIANCE TITLE COMPANY, a California corporation, herein called TRUSTEE, and

the LOMA LINDA REDEVELOPMENT AGENCY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Loma Linda, County of San Bernardino, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$[to come: conform to DDA text] with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other

DRAFT

FOF STUDY PURPOSES ONLY

counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

DRAFT
FOF STUDY PURPOSES ONLY

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	S. Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	S. Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	S. Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	S. Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	1964	149774			
						Series 5					

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA)
COUNTY OF _____) *Signature of Trustor*

On _____ before me,

personally appeared _____,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose names(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

SIGNATURE _____

10777 POPLAR ST., L.P.,
a California Limited Partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation
its Managing General Partner

By: _____
Name: Charles Brumbaugh
Title: President

By: Lynx Realty & Management, LLC,
a California Limited Liability Company, its
Administrative General Partner

By: _____
Name: Charles Brumbaugh
Title: Managing Member

(This area for official notaries seal)

EXHIBIT “A”

LEGAL DESCRIPTION

[To Come]

EXHIBIT "B"

RIDER TO DEED OF TRUST

Exhibit B to Deed of Trust with Assignment of Rents dated as of _____, 2006, executed by 10777 POPLAR ST., L.P., a California limited partnership, as "Trustor", to Alliance Title Company, a California corporation, as Trustee, for the benefit of Loma Linda Redevelopment Agency, a public body, corporate and politic, as "Beneficiary" ("Deed of Trust").

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary's option, constitute a default under this Deed of Trust:
 - (a) A default under that certain Disposition and Development/Affordable Housing Agreement ("Agreement") dated as of March 1, 2006, between Trustor and Beneficiary or any default under any Agency Note or Agency Deed of Trust delivered under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
 - (b) A default under the "Agency Developer CC&Rs" (as executed and recorded pursuant to the Agreement); or
 - (c) A default under the Agency Lease (as entered into pursuant to the Agreement).
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary's option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (c), inclusive (collectively the "Other Deeds of Trust"), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Property, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term "Transfer" means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Property, granting of an option to purchase any portion of or interest in the Property or any interest therein, or the lease of all or substantially all of the Property or of all or substantially all of the improvements situated on the Property. "Transfer" shall not include the leasing of individual dwelling units on the Property so long as Trustor complies with the provisions of the Agreement relating to such leasing activity. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Developer's limited partner of its

DRAFT
FOF STUDY PURPOSES ONLY

partnership interest to the extent permitted by the DDA nor shall Transfer include the removal or any general partner of Developer by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Developer's partnership agreement to the extent permitted by the DDA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following:

(i) the Agency Lease; (ii) the Bond Regulatory Agreement; and (iii) the Agency Developer CC&Rs.

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

DRAFT
FOF STUDY PURPOSES ONLY

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

DRAFT
FOF STUDY PURPOSES ONLY

successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD REQUEST FOR FULL RECONVEYANCE

TO ALLIANCE TITLE COMPANY, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: _____

Please mail Deed of Trust,
Note and Reconveyance to

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

**DEED OF TRUST
with power of sale**

**Alliance Title Company
TRUSTEE**

Table of Contents

	<u>Page</u>
1. DEFINITIONS AND INTERPRETATION.....	2
1.1 Defined Terms	2
1.2 Singular and Plural Terms	8
1.3 References and Other Terms.....	8
1.4 Exhibits Incorporated.....	8
1.5 The Redevelopment Plan	8
1.6 Representations and Warranties.....	9
2. DISPOSITION OF THE SITE	10
2.1 Lease of the Site.....	10
2.2 Escrow.....	11
2.3 Review of Title	14
2.4 Title Insurance	14
2.5 Developer Payments	15
3. CONDITION TO CLOSING AND TO DISBURSEMENT OF THE AGENCY DISBURSEMENT AMOUNT	15
3.1 Agency Conditions Precedent.....	15
4. SCOPE OF DEVELOPMENT; INSURANCE AND INDEMNITY, FINANCING	17
4.1 Scope of Development.....	17
4.2 Design Review	17
4.3 Time of Performance; Progress Reports	18
4.4 Cost of Construction	18
4.5 Insurance Requirements.....	18
4.6 Obligation to Repair and Restore Damage Due to Casualty.....	19
4.7 Indemnity	20
4.8 Rights of Access	21
4.9 Compliance With Laws.....	21
4.10 Nondiscrimination in Employment.....	21
4.11 Taxes and Assessments.....	21
4.12 Liens and Stop Notices	21
4.13 Certificate of Completion	22
4.14 Further Assurances.....	22
4.15 Financing of the Improvements.	22
4.16 Mechanics of Disbursement of Agency Disbursement Amount.....	27
5. COVENANTS AND RESTRICTIONS	28
5.1 Use Covenants	28
5.2 Affordable Housing Requirements.	29
5.3 Verifications.....	30
5.4 Maintenance of Site	31

Table of Contents
(continued)

	<u>Page</u>
5.5 Nondiscrimination Covenants.....	31
5.6 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction	32
6. DEVELOPER’S GENERAL REPRESENTATIONS AND WARRANTIES.....	32
6.1 Formation, Qualification and Compliance.....	32
6.2 Execution and Performance of Project Documents	33
6.3 Covenant Not to Transfer Except in Conformity	33
7. DEFAULTS, REMEDIES, AND TERMINATION.	33
7.1 Default Remedies.....	33
7.2 Institution of Legal Actions	34
7.3 Termination by the Developer	34
7.4 Termination by Agency	34
7.5 Acceptance of Service of Process	35
7.6 Rights and Remedies Are Cumulative	35
7.7 Inaction Not a Waiver of Default.....	35
7.8 Applicable Law	35
7.9 Further Assurances.....	35
7.10 Enforced Delay; Extension of Times of Performance	35
7.11 Transfers of Interest in Agreement or of Site	36
7.12 Non-Liability of Officials and Employees of Agency	37
7.13 Relationship Between Agency and Developer.....	37
7.14 Agency and City Approvals and Actions.....	37
7.15 Real Estate Brokers.....	38
7.16 Attorneys’ Fees	38
7.17 Non-recourse Liability of Developer	38
8. MISCELLANEOUS.....	38
8.1 Obligations Unconditional and Independent.....	38
8.2 Notices	38
8.3 Survival of Representations and Warranties.....	39
8.4 No Third Parties Benefited Except for City.....	39
8.5 Binding Effect; Assignment of Obligations.....	39
8.6 Counterparts	39
8.7 Prior Agreements; Amendments; Consents	39
8.8 Governing Law	40
8.9 Severability of Provisions	40
8.10 Headings	40
8.11 Conflicts	40
8.12 Time of the Essence	40
8.13 Conflict of Interest	40
8.14 Warranty Against Payment of Consideration	40

Table of Contents

ATTACHMENTS

ATTACHMENT NO. 1	MAP
ATTACHMENT NO. 2	LEGAL DESCRIPTION OF THE SITE
ATTACHMENT NO. 3	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 4	CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
ATTACHMENT NO. 5	[INTENTIONALLY OMITTED]
ATTACHMENT NO. 6	AGENCY LEASE
ATTACHMENT NO. 7	CALCULATION OF AFFORDABLE RENTS
ATTACHMENT NO. 8	REQUEST FOR NOTICE OF DEFAULT
ATTACHMENT NO. 9	SCOPE OF DEVELOPMENT
ATTACHMENT NO. 10	CERTIFICATE OF COMPLETION
ATTACHMENT NO. 11	AGENCY DEVELOPER CC&RS
ATTACHMENT NO. 12	INCOME VERIFICATION
ATTACHMENT NO. 13	AGENCY NOTE
ATTACHMENT NO. 14	AGENCY DEED OF TRUST